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Decision 99-09-066 September 16, 1999

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas And Electric Company
For Authorization To Sell The El Dorado
Hydroelectric Project To El Dorado Irrigation
District Pursuant to Public Utilities Code
Section 851.

(Electric)

(U 39 E)

Application 98-04-016
(Filed April 8, 1998)

(See Appendix A for List of Appearances.)

TABLE OF CONTENTS

Title	Page
Opinion.....	2
I. PROJECT HISTORY AND REGULATION	3
A. Project Description	3
B. 1919 Contract and Public Utility Water-Supply Obligation	4
C. 1920 to 1997: Project Development, FERC Licensing, and Commission Rate Regulation	8
D. 1983 to 1998: Electric and Water Supply Operations, Damage, and Repairs	11
E. 1994 to 1997: Project Transfer	13
II. RESPONSE TO TERMINATION OF 1995 ASA AND PROJECT 184 OUT-OF-SERVICE STATUS	19
A. PG&E'S Cost-Effectiveness Determination	19
B. FERC License Surrender	20
C. Superior Court Litigation	21
D. 1995 ASA Arbitration	22
E. A.97-11-012: Riverton Water Supply System	22
F. A.97-12-020/I.97-11-026: PG&E General Rate Case/El Dorado Project Out- of-Service Status	24
III. CONDITIONAL ASSET TRANSFER AGREEMENT (CATA)	25
IV. STATUS OF PROCEEDINGS AND CEQA REVIEW	28
A. Existing Proceedings	28
B. FERC License Transfer	29
C. CEQA Review	29
V. ISSUES	30
VI. POSITION OF THE PARTIES	31
A. PG&E's Position	31
B. EID's Position	35
C. ORA's Position	41
D. The League's Position	44
E. Other Parties' Positions	46
VII. DISCUSSION	46
A. Benefits to Ratepayers	47
B. Value to EID	50
C. Value to PG&E	54
VIII. CEQA COMPLIANCE	55

IX. APPLICABILITY OF PUB. UTIL. CODE SECTION 363.....57

X. MOTIONS.....59

XI. COMMENTS TO THE PROPOSED DECISION AND
ALTERNATE PAGES (AS REVISED)59

Findings Of Fact.....60

Conclusions Of Law66

Order.....67

APPENDIX A

APPENDIX B

APPENDIX C

OPINION

Pacific Gas and Electric Company (PG&E) seeks authorization to sell the El Dorado Hydroelectric Project (El Dorado Project or Project) to El Dorado Irrigation District (EID).¹ The terms and conditions of the proposed sale are contained in the Conditional Asset Transfer Agreement (CATA) signed by PG&E and EID on April 6, 1998, and incorporated in the application. The terms of the CATA call for a sales price of \$1.00 to be paid by EID to PG&E and recovery by PG&E through electric rates of a \$17,000,000 "as-is" payment to EID.

The Office of Ratepayer Advocates (ORA) supports the transfer but opposes the payment. The El Dorado County Water Agency (EDCWA), the California Farm Bureau Federation (Bureau), and the El Dorado County Citizens for Water (Citizens) support the application. The League to Save Sierra Lakes, et al. (the League) opposes.

This decision approves the sale of PG&E's El Dorado Hydroelectric Project to the El Dorado Irrigation District. The Project is currently inoperable due to severe storm damage. PG&E has offered to pay to EID \$17 million to take the project and assume decommissioning costs of about \$11.7 million. PG&E asks that the \$17 million be a charge against ratepayers. We hold that a payment of \$15 million to be charged against ratepayers is reasonable. This decision also

¹ EID is an irrigation district organized and existing under the laws of the State of California. EID is located in El Dorado County. EID is not subject to the jurisdiction, regulation, supervision, or control of the Commission.

settles a water rate dispute and relieves PG&E from public utility water obligations in relation to the assets being sold.

Six days of evidentiary hearings were held January 25 through January 29 and February 18, 1999, before Administrative Law Judge Robert Barnett, designated as the principal hearing officer. The proceeding was submitted April 21, 1999, after receipt of briefs. The principal hearing officer's Proposed Decision was timely prepared. Because of the complex nature of this proceeding, with antecedents reaching back to 1876, we provide a brief history.

I. Project History and Regulation

A. Project Description

The Project is a hydroelectric facility with 21 megawatts (MW) normal operating capacity and with an associated water delivery system. The Project is located on the South Fork of the American River (SFAR) and its tributaries in the counties of El Dorado, Alpine, and Amador, California, and occupies lands administered by the U.S. Forest Service. The Project is owned and operated by PG&E under a license issued by the Federal Energy Regulatory Commission (FERC), which license identifies the facility as Project 184.

As described in Exhibit 1, at pp. 1-4, the Project license consists of the following:

- four storage reservoirs (Echo, Medley, Caples, and Silver Lakes) impounded by a total of 16 dams that range between 1.5 and 69.5 feet in height and which release water into the tributaries of the SFAR;
- the 20-foot high El Dorado Diversion Dam near Kyburz on the SFAR;
- the 22.3-mile long El Dorado Canal, into which water is diverted by the El Dorado Diversion Dam;

- five smaller diversion dams which divert water from tributaries into the El Dorado Canal;
- the 91-foot high El Dorado Forebay Dam and its associated reservoir (forebay) that diverts water from the canal into a 2.8 mile pipeline and penstock and also into EID's water-distribution canal;
- a power plant containing two generators with a total installed capacity of 21 MW;
- an electrical transmission and distribution switchyard and a nine-mile long, 115 kilovolt (kV) transmission line; and
- various appurtenant facilities.

Except for the transmission and distribution facilities that PG&E will continue to own, all of the other facilities are proposed to be transferred by PG&E to EID pursuant to this application. Sale of these facilities to EID also includes the transfer of Project-dedicated and related property and water rights, governmental permits, studies, and personal property, except as otherwise excluded.²

B. 1919 Contract and Public Utility Water-Supply Obligation

In 1876, the El Dorado Water and Deep Gravel Mining Company completed the El Dorado Canal for gold mining operations. Since the construction of the water system, however, water has also been continuously delivered and sold for irrigation and domestic use in El Dorado County.³

² Ex. 1, at p. 1-4, n. 1; Exhibit 3, at pp. 5-6; Exhibit 3, Schedules 2.1 and 2.2. See also, Ex. 14. Footnote 1 of Exhibit 1 states: "PG&E will retain ownership of the transmission and distribution facilities. The transmission facilities are non-jurisdictional and will be separated from the FERC license through a license amendment."

³ Ex. 1, at pp. 1-4; Ex. 5, Attachment A, at p. 6.

In 1916, PG&E's predecessor (Western States Gas and Electric Company (Western)) acquired the El Dorado Canal for the purpose of developing "an extensive hydroelectric plant."⁴ Soon after buying the El Dorado Canal, Western publicly announced that it planned "to devote to the development of electric energy all water developed or to be developed in this system," including that water previously supplied to irrigation and other consumers.⁵ In response, El Dorado County water users formed EID's predecessor (the El Dorado Water Users Association) to obtain "an adequate supply of water for irrigation and domestic use and ...[to conduct] legal proceedings before the Railroad Commission, as may be necessary to protect the rights and interests of the water users of said county."⁶ It was the Association's position that "all water now developed on this system and hereafter capable of being developed therefrom... has been devoted to the public use of irrigation and domestic purposes within the watershed of the South Fork of the American River."⁷

The legal proceeding initiated by the Association was a complaint to the Commission that resulted in the issuance of Decision (D.) 5409 on May 20, 1918. In D.5409, the Commission determined that "the uses for which the water from this system have been sold have always been public."⁸ The

⁴ Id.; CPUC Decision 5409 (1918) 15 CRC 681, at p. 699.

⁵ D. 5409, supra, 15 CRC at pp. 682, 705.

⁶ Id. At the time of this action, the Commission was known as the California Railroad Commission.

⁷ Id., at p. 704.

⁸ D.5409, 15 CRC at 705-706.

Commission therefore concluded that Western was bound by a public trust to provide El Dorado County consumers with water from the system. That obligation was not limited to the amount of water that had been previously provided; it also encompassed the entire unused capacity of the El Dorado Canal. The Commission indicated that Western could be required to enlarge the existing facilities and to develop additional water in order to meet its obligations as a public utility.

In D.5409, the Commission also concluded that uncertainty "as to the exact quantity of water which will be available to the various parties is not desirable ... [but] seems unavoidable unless the parties reach a definite agreement defining...their respective rights."⁹ The Commission, however, refrained from determining the extent of Western's obligations to El Dorado County's consumers. Instead, D.5409 set forth principles by which the parties were to be guided in reaching an agreement defining and fixing those obligations to permit each party to "look to the future with ... assurance and certainty."¹⁰ The Commission concluded that such an agreement would permit "the irrigationists [to] know the exact extent of what they may expect from this system."¹¹

Following the issuance of D.5409, PG&E's and EID's predecessors entered into a contract on May 13, 1919, hereinafter referred to as the

⁹ Id. at p 714.

¹⁰ Id.

¹¹ Id.

1919 Contract.¹² Under the terms of the agreement, the maximum amount of water Western and its successors agreed to sell at wholesale to EID's predecessor was fixed at 15,080 acre feet per year. The price to be paid by consumers of El Dorado Canal water was set according to schedules in the Agreement, at approximately \$3.50 per acre-foot.¹³ Western and its successors were obligated to maintain and repair the Canal. The parties also agreed to deal with each other fairly and in good faith, and not to injure the other's rights to receive the benefits of the contract. Disputes as to the meaning or operation of the contract were to be submitted to arbitration, except that the maximum amount of water required to be provided pursuant to the contract would not be subject to arbitration.¹⁴

By D.6436, the Commission, as requested by Western, reviewed and approved the water sale agreement.¹⁵ The Commission stated that this approval "definitely fixes the obligations of Western States to deliver water in such manner as to permit it to proceed with the development of its hydroelectric projects."¹⁶

Other than a minor amendment to the 1919 Contract undertaken by the parties in 1924 to clarify the computation of the price for water service, neither the contract nor the price for water has been changed since 1924. All parties have performed their obligations under the 1919 Contract for the last 70 years without

¹² Ex. 20.

¹³ The dispute regarding the interpretation of the contract price to be paid for water is a major factor behind the agreed price in the CATA.

¹⁴ Ex. 20, at pp. 4-15

¹⁵ D.6436 (1919) 16 CRC 947.

¹⁶ Id., at 948.

Commission involvement, and the contract remains in effect today (although price is disputed).

The maximum amount of water which PG&E may be called upon to deliver to EID in any one calendar year, as established by the 1919 Contract, is 15,080 acre-feet. This contractual limit is also the limit of PG&E's right to deliver water from the Project for consumptive use. EID claims that the 15,080 acre-feet is an existing entitlement of water rights and represents an essential, one-third to one-half of EID's water supply. EID holds the view that based on the language, circumstances, and intent of the 1919 Contract, the price for water was permanently fixed by the contract. While PG&E believes that this price could be changed and did in fact seek such a change in Application (A.) 97-11-012, PG&E has concurred that the quantity of water to be delivered to EID was permanently fixed by the 1919 Contract. (A.97-11-012, at n. 5.) In A.97-11-012, it was also PG&E's position that D.5409 had established its public utility obligation to supply water to EID from which it could not be relieved absent an order of the Commission. (A.97-11-012, at p. 24.)

**C. 1920 to 1997: Project Development, FERC
Licensing, and Commission Rate Regulation**

In the 1920s, having capped the amount of water it could be called upon to provide to consumers, Western was able to apply all other water toward the development of a hydroelectric power generation system at the site of the El Dorado Canal (the El Dorado Project).¹⁷ In 1921, the Commission granted a

¹⁷ Ex. 5, Attachment A, at pp. 7-8.

certificate of public convenience and necessity for power development to the El Dorado Power Company, a subsidiary of Western.¹⁸

On February 22, 1922, FERC's predecessor issued a 50 year license for the Project (FERC Project 184) to El Dorado Power Company. Construction of the power facilities began in 1922, with power operations commencing on January 26, 1924. In 1927, PG&E purchased most of Western's stock, and a merger and transfer of the Project property and the 1919 Contract to PG&E were approved by the Commission in 1928, with no change in Western's pre-existing, Commission-approved water-supply obligation.¹⁹

In October 1928, authority was received from FERC to transfer the Project 184 license to PG&E. Project 184 was relicensed in 1980. The current FERC license will expire on February 23, 2002.

Under both the FERC license and Commission decisions, the El Dorado Project has consistently been recognized and treated as an integrated project consisting of two elements: the production of hydroelectric energy and the supply of 15,080 acre feet of water annually to EID. PG&E cannot proceed to convert the El Dorado Project to a non-power, water supply-only operation without FERC's approval. In this regard, FERC has full authority to order PG&E to restore the project to full operation and to "fulfill such other obligations under the license as [FERC] may prescribe."²⁰

¹⁸ D.9642 (1921) 20 CRC 710.

¹⁹ D.19590 (1928) 31 CRC 516.

²⁰ FERC Project 184, License L-1, 1975 Revision; see also, Ex. 1 at pp. 3 - 4.

In terms of electric ratemaking, the Commission has viewed the Project as first and foremost an electric generation project, with water supply considered an ancillary, peripheral service to that electric generation function.²¹ As the testimony of PG&E states:

"The El Dorado Project has been in electric plant in service since 1919. Historically, the Project has been in rate base and the associated capital-related costs and operation and maintenance (O&M) expenses have been included in PG&E's Electric Department revenue requirement and recovered through electric rates. The fixed-price water deliveries to El Dorado Irrigation District (EID) under the 1919 Contract ... have been considered an ancillary service to power production and the incidental revenues from the sales have been recorded as electric other operating revenues."²²

This approach to Project ratemaking was confirmed by PG&E witness Weingart who testified:

"[I]n past [PG&E] general rate cases, the total cost of the operation of the El Dorado Project, both for electricity and water, had been included in the expenses and results of operation statement. And that was used to determine the total revenue requirement for the electric department.

"That total revenue requirement is then offset, to a certain extent, by other operating revenues including revenues from the sale of water to EID before determining exactly the rates charged to electric ratepayers.

²¹ Ex. 1, at p. 2-1; RTat 203.

²² Ex. 1, at p. 2-1.

"So in that way, all costs associated with El Dorado on a forecast basis less the forecast revenues in the water contract are borne by electric ratepayers."²³

In response to electric industry restructuring, this traditional, historical approach to electric ratemaking was replaced beginning January 1, 1998, with mechanisms consistent with Commission decisions in PG&E's electric generation performance-based ratemaking (PBR) application and in Commission proceedings addressing transition costs and capital additions recovery.²⁴

Among other things, the capital-related costs and O&M expenses associated with the El Dorado Project are being recovered through the Transition Cost Balancing Account (TCBA) and its memorandum accounts. In addition, with the Project's market value being estimated to be less than its book value, the resulting uneconomic sunk costs and the approved capital-related revenue requirement are being amortized through subaccounts of PG&E's TCBA. Thus, the Commission has authorized the continued treatment of Project costs as attributable to electric generation.

D. 1983 to 1998: Electric and Water Supply Operations, Damage, and Repairs

In 1983, the Project began to experience a series of problems impacting its operation. That recent history included the following events:

²³ RT at 198. The witness also made clear that the El Dorado Project was treated as an electric generation facility with "the water assets [being] only peripheral to that" and that "this Commission had always treated, and PG&E had always accepted, the concept that the costs of generating electricity from the project was the total cost of the project minus the water revenues." (RT at 203).

²⁴ Exhibit 1, at pp. 2-3; D.97-12-096 (PG&E PBR), D. 97-06-060 and D.97-11-074 (transition cost recovery), and D.97-09-048 and D.98-03-054 (capital additions).

- 1983: Floods and landslides destroy and damage portions of the El Dorado Canal, closing it for over a year.
- 1992: The Echo Lake Dam requires major modifications to ensure seismic safety.
- 1992: A major fire destroys several sections and damages other sections of the canal and flumes.
- 1993: In March, the El Dorado Powerhouse is flooded due to the rupture of a high-pressure turbine nozzle body housing, and is put out of operation.
- 1995-1996: EID restores the powerhouse in anticipation of its sale pursuant to a 1995 Asset Sale Agreement with PG&E.
- 1997: On January 1, 1997, a devastating storm induces flooding that destroys the El Dorado Diversion Dam, inundates the powerhouse, causes extensive damage to canal facilities, and accelerates slope instability and erosion along many miles of the upper canal.

The 1995-1996 restoration activities performed by EID were extensive, including repair, replacement, and installation of facilities and systems. EID completed this work and the Project became operational in late June 1996. Pursuant to an O&M Agreement executed by PG&E and EID on June 7, 1996, EID operated and maintained the Project with its own personnel until September 5, 1997. No PG&E employees were assigned to assist with EID's operation or maintenance of the facility, and PG&E's headquarters at the facility were closed.

As a result of the damage experienced by the Project in 1997, the Project has not generated electricity since that time. Water deliveries to EID have been limited to intermittent water sources downstream of the damaged area of the canal and those delivered by means of an emergency, temporary restoration of water supply.

The emergency, temporary restoration had been undertaken pursuant to the February 2, 1998 approval by the Superior Court for El Dorado County of a stipulated agreement between PG&E and EID. Under that agreement, EID would be allowed access by PG&E to the Project for the purpose of restoring "temporary emergency water supply and winterization work" provided that EID assumed all costs and liability for the work and obtained all required environmental and regulatory approvals."²⁵ This temporary restoration, completed in the summer of 1998, is not considered permanent, is subject to geological hazard, and is considered a costly, emergency response to the cut-off of a needed water supply. Although originally estimated to cost \$850,000, the final cost of the temporary repairs totaled \$1.2 million, a cost borne entirely by EID and its customers solely for the purpose of getting the water turned back on. PG&E did not reimburse EID for the temporary restoration.

E. 1994 to 1997: Project Transfer

1. 1994 Auction

In the summer of 1994, PG&E began to actively seek a buyer for the El Dorado Project. At the time, the Project was inoperable due to the March 1993 turbine nozzle body failure. Thus, in 1994, the Project was not generating hydroelectric power, although water deliveries were able to continue.

To assist in marketing the Project, PG&E retained the assistance of a marketing consultant who prepared an assessment report to assist PG&E in its decisions on marketing the project.²⁶ That report determined that the "value of

²⁵ Ex. 1, at pp. 1-3.

²⁶ RT at 442 - 443.

the project to all buyers for the as-is nature of the project at that time, in its state of disrepair, was negative."²⁷ Even based on its own evaluation at that time, PG&E was "very ... convinced that [the Project] was negative on a forward-going basis in terms of value to PG&E" and believed it would be "clearly negative" on that same basis for other buyers.²⁸

PG&E widely announced the sale, marketed the Project to dozens of potential buyers, conducted eight site showings, and obtained conditional or preliminary proposals from five organizations. While El Dorado County Water Agency submitted a proposal, neither Alpine County nor Amador County chose to compete in that bidding process. After a process of clarifications and resubmittals, PG&E performed a risk analysis between EID (which had assumed the proposal originally submitted by EDCWA) and the other front-running competing proposal. The risk analysis concluded that negotiations with EID would have the highest expected value and least closing risk. Further, EID was the only potential buyer with the ability to unconditionally relieve PG&E and electric ratepayers from the water-supply obligation that has been part of the Project since its inception.

2. 1995 Asset Sale Agreement

Once having selected EID's proposal, PG&E commenced negotiations with EID to reach an asset sale agreement.

²⁷ RT at 355.

²⁸ RT at 357. According to PG&E witness Peirano, the privileged assessment report found a range of values for the Project based on different scenarios. Mr. Peirano testified that "[t]he highest value the consultant estimated under any of those scenarios was very close to zero." (RT at 436-437.)

On September 1, 1995, EID and PG&E reached agreement on the sale of the Project to EID (1995 Asset Sale Agreement (ASA)).²⁹ Although the overall purchase price for the Project under the 1995 ASA was \$2 million, this purchase price did not represent the entirety of the 1995 ASA agreement. According to PG&E's and EID's joint testimony:

"[T]he 1995 ASA 'package deal' also included a Power Purchase Agreement, shared liability for repairs ..., and costs associated with three lawsuits. PG&E would have been required to purchase power for seven years from EID at 3.3 cents/kWh with a 3.8 percent annual escalation rate. Based on market forecasts, had the ASA not been terminated, the Net Present Value (NPV) of above-market payments under the PPA terms (using a PG&E projection of market prices in place at the time of the ASA) is between \$4 million and \$5 million (pre-tax). Also, since EID's purchase price would have been paid in two installments, \$0.5 million at closing and \$1.5 million on December 31, 2003, the present value of the purchase price due to the time value of money would have been approximately \$1.3 million, rather than the nominal \$2 million figure. Considering just these two factors (much less ongoing legal costs and storm damage to the Project), the value of the original deal was negative, and no credit to book value would have been realized."³⁰

²⁹ Ex. 16.

³⁰ Ex. 2, at pp. 11-12. EID witness Marcus also confirmed this value of the Purchase Power Agreement to EID when he testified: "[F]rom EID's general perspective ...there was \$4 million or \$5 million of economic benefit from the purchased-power agreement to EID inasmuch as the power was at costs expected to be above market prices. That was part of the overall economic bargain that was struck." (RT at 213-214.)

The ASA, which was signed on September 1, 1995, and amended on June 7, 1996, included the skeleton of a complex pre-closing and post-closing relationship between PG&E and EID involving the restoration of operations and the transitioning of Project ownership to EID. The 1995 ASA thus was not a complete deal in itself and expressly contemplated further negotiations between PG&E and EID on a number of related exhibits and agreements that were integral to the transaction. The other major agreements requiring further negotiations and completion after the 1995 ASA was signed included the following: (1) Construction and Access Agreement, (2) Interconnection and Metering Agreement, (3) Power Purchase Agreement, (4) Benefit of Repair Agreement, which became the Operation and Maintenance Agreement; and (5) Access/License Agreements for Joint Facility Use. Extensive, substantive negotiations regarding these agreements and terms of the transfer of the Project continued after September 1, 1995, until June 7, 1996.

On June 7, 1996, the ASA was amended and the additional agreements were signed. The ASA terms show that the sale could not have been finalized without those additional agreements, and the closing of the 1995 sale was expressly conditioned on the negotiation and execution of these agreements. Each party, under specific circumstances, could terminate the ASA by written notice at any time prior to the Closing Date. "Closing" of the agreement was also an event that was not to take place until after Commission approval of a Pub. Util. Code § 851³¹ application, and either party could have withdrawn from the agreement at any time up until the actual closing.

³¹ All statutory references are to the Pub. Util. Code, unless otherwise noted.

PG&E believed that any § 851 filing for approval of the 1995 ASA made prior to June 7, 1996, would have been incomplete in describing material terms of the proposed transfer and could not have been made until the material terms of the transfer had been agreed to by PG&E and EID.

PG&E was concerned about the parties' ultimate ability to close the sale even after June 1996 for the following reasons:

- (a.) the considerable uncertainty over whether an Environmental Impact Report (EIR) was necessary under the California Environmental Quality Act (CEQA) and its potential effect on the closing of the sale;³²
- (b.) the resolution of outstanding issues between the parties related to the 1995-1996 restoration process and the economic impact on a going-forward basis of payments to EID and performance by PG&E and EID under the terms of the Power Purchase Agreement; and
- (c.) EID's demonstration of capability to assume ownership and operation in accordance with FERC requirements and all applicable regulatory requirements, which was a condition precedent in the 1995 ASA.

Ultimately, no § 851 application was ever filed by PG&E for approval of a transfer of the El Dorado Project pursuant to the 1995 ASA.

³² PG&E's concern with respect to CEQA centered on EID then having to defend three separate CEQA lawsuits filed by a number of parties, including the League, in El Dorado County superior court. It was not until early 1998, that the court decided that EID was only required to go through the CEQA process to operate the Project, not to own it. (Ex. 2, at p. 8.)

Under the Construction and Access Agreement (C&AA), EID ultimately expended \$5.2 million in restoring the Project. Under that same agreement, PG&E was obligated to reimburse EID up to the contractual ceiling amount of \$4,476,897 for those restoration activities. Since EID's expenditures exceeded that limit, PG&E reimbursed EID to the ceiling amount. PG&E made the last reimbursement to EID for capital additions on August 31, 1997. Pursuant to the O&M Agreement, EID operated the Project from June 1996 until September 5, 1997, following the termination of the ASA.

3. Termination of the 1995 Asset Sale Agreement

After the Project was rendered inoperable for both power generation and water deliveries by the 1997 New Year's Day Storm, PG&E and EID engaged in ongoing discussions regarding the Project. Those discussions focused on reaching agreement on restoration alternatives and on the feasibility of continued implementation of the 1995 ASA or, alternatively, restructuring the agreement. On June 5, 1997, however, PG&E terminated the ASA and the O&M Agreement. PG&E explained:

"PG&E's decision was made after damage analyses, repair cost analyses, and re-evaluation of the transaction in light of both the dynamic changes in the electric industry caused by restructuring which had been affected by both legislation and Commission decision, and PG&E's ongoing concern that EID might not be able to close the transaction because of the three pending environmental lawsuits. In addition, PG&E determined, as long as EID retained its own unilateral termination rights under the ASA, PG&E could not make a financial commitment to restore the Project to full operation

without risk of being burdened with an uneconomic generating asset. PG&E believed that cost recovery of its investments was uncertain through rates, competition transition charges, or the PX market revenues."³³

PG&E also believed that these same reasons would have led the Commission to summarily reject any § 851 application being filed for approval of the 1995 ASA.

II. Response To Termination Of 1995 ASA and Project 184 Out-Of-Service Status

Following PG&E's termination of the 1995 ASA in June 1997 and the out-of-service status of the El Dorado Project, PG&E and EID responded in several ways.

A. PG&E'S Cost-Effectiveness Determination

When it terminated the ASA, PG&E had concluded that, with the Project no longer operational and with water deliveries to EID largely interrupted, the Project was not cost-effective for PG&E to restore as a hydroelectric project. PG&E estimates that restoration of the gravity-flow water delivery system, using EID's preferred alternative of a tunnel bypass of the most landslide-prone area, without restoring power generation, would cost between \$14 million and \$20 million. Restoration of power generation capability would raise the estimate to between \$16 and \$21 million. In addition to the cost of restoration, PG&E anticipated O&M expenses of \$9.5 to \$13.8 million (30-year after-tax net present value) plus future capital additions, including relicensing costs and new license conditions in the range of \$17.5 million to \$25.4 million

³³ Ex. 2, at p. 10. See also, Ex. 1, at pp. 1-8.

(30 year net present value). The total expected after-tax net present value of the cost to restore, operate and maintain the Project over the next thirty years is \$49.9 million. The expected after-tax net present value of generation from the plant is \$21.1 million, resulting in an expected overall value of negative \$28.8 million for the plant over the next 30 years, restored and operated as a water delivery and hydroelectric generation facility. Restoring the water delivery facilities only and decommissioning the power generation facilities would result in an after-tax net present value of negative \$31.8 million. PG&E determined that:

"[R]estoring the hydroelectric project would not be economic – in that the costs of restoring and continuing to operate the hydroelectric facilities would exceed the value of power generated from the facilities. This conclusion was based primarily on PG&E's own forecast of costs using a long-term, life-cycle economic analysis which determined the least cost, least risk analysis."³⁴

That analysis, which compared PG&E's proposed Riverton Water Supply System (Riverton WSS), a water supply using a tunnel and a repaired canal system, with restoration of the water supply and power project, demonstrated that, in PG&E's opinion, the cost of restoring and operating the power project would be approximately two to four times greater than the value of power.

B. FERC License Surrender

Immediately following its termination of the 1995 ASA, on July 9, 1997, PG&E advised FERC that it was withdrawing its February 20, 1997 Notice of Intent (NOI) to file an application to relicense the El Dorado Project. PG&E also

³⁴ Ex. 4, Attachment, ORA Data Request #2, Question 1.

informed FERC of its decision to terminate the 1995 ASA with EID, citing the existence of the three CEQA lawsuits and extensive closing delays. Due to these facts, PG&E advised FERC that full Project restoration for hydroelectric generation was not a viable alternative and that PG&E intended to prepare a license surrender application.

On October 7, 1997, FERC issued a notice accepting PG&E's withdrawal and soliciting applications for a power license for the El Dorado Project by February 23, 2000. In December 1997, EID notified FERC that it intended to apply for a new license for the Project. No other party applied for the license.

C. Superior Court Litigation

Faced with PG&E's termination of the 1995 ASA and other Project-related PG&E actions, EID concluded that its water supply was in jeopardy. In response, on July 2, 1997, EID filed a complaint in the superior court of El Dorado County seeking specific performance of the 1919 water supply contract and related damages. By that complaint, EID also sought preliminary and permanent injunctive relief and declaratory relief determining that PG&E must comply with and perform under the terms of the 1919 Contract. PG&E cross-complained on October 17, 1997.

On November 13, 1997, PG&E filed a motion for judgment on the pleadings in the superior court case. In support of that motion, PG&E asserted that its filing of A.97-11-012 (see below) vested this Commission with exclusive jurisdiction to adjudicate the issues raised in the complaint and rendered the superior court without jurisdiction to adjudicate EID's complaint. EID filed a responding pleading opposing the motion. On December 5, 1997, the superior court denied PG&E's motion, allowing the court action to proceed to a trial on the merits.

D. 1995 ASA Arbitration

As noted above, on June 5, 1997, PG&E terminated the ASA and the O&M Agreement. On July 9, 1997, EID sent written notice under Paragraph 9.9 of the ASA of EID's claims for damages due to wrongful, material breach by PG&E of the ASA and O&M agreement as a result of the June 5 termination. The notice also advised that EID was prepared to submit its claims for damages and other appropriate relief directly to arbitration in accordance with provisions of the ASA and O&M Agreement. EID's notice included a claim against PG&E of \$52 million, representing damages to EID in the event EID's superior court claim was not granted and EID was required to incur the cost of both restoration and operation of the El Dorado Canal water conveyance system. EID also sought reimbursement of \$4.5 million incurred in acquiring the Project.

E. A.97-11-012: Riverton Water Supply System

Beginning in June 1997, PG&E began to pursue development of the Riverton Water Supply System (Riverton WSS) to satisfy the water utility obligation and to honor the 1919 water-supply contract. On November 7, 1997, PG&E filed A.97-11-012 to request a water price increase. In that application, estimated costs to convert the Project to water-supply only included capital additions for the proposed Riverton WSS (a pump facility), decommissioning costs associated with the power facilities and FERC license surrender, and O&M expenses for the water-supply function. Of these costs, only the capital cost of the Riverton WSS (estimated at approximately \$10 million) and the water supply O&M costs were included in the proposed price increase.

In A.97-11-012, PG&E's proposed ratemaking still envisioned that the major portion (approximately 80%) of the sunk costs of the existing Project facilities remained allocable to electric utility function.³⁵ As PG&E has continued to recognize:

"[T]he primary purpose of these facilities is to provide water for power production; 100 percent of these facilities were needed for that purpose. The water deliveries to EID were incidental to power operations. All Project facilities would have needed to be in place even if PG&E had no water-service obligation."³⁶

Approval of PG&E's application would have resulted in an increase for the price for water delivered to EID from the present amount of \$3 per acre-foot to amounts equivalent to \$268 per acre-foot beginning in 1998, and \$325 beginning in 1999.³⁷

On December 15, 1997, protests to the application were filed by EID, EDCWA, and the Citizens. Both EID and EDCWA also filed motions to dismiss the application. On January 14, 1998, PG&E responded to both the protests and motions to dismiss. On January 26 and 27, 1998, replies to PG&E's response were filed by EID, EDCWA, the Citizens, and the League.

EID sought dismissal of the application on grounds that under the 1919 Contract, PG&E's obligation to supply 15,080 acre-feet of water at \$3.50 per

³⁵ Ex. 1, at pp. 1-9, n. 4, 2-2; Ex; A.97-11-012, at pp. 10-11. The allocated sunk costs included costs of the water storage and conveyance facilities, such as dams and waterways, that had been used for both power production and water delivery.

³⁶ Ex. 1, at p. 2-2.

³⁷ A.97-11-012.

acre-foot was a fixed and permanent obligation. It was also EID's position that costs associated with the Project were an obligation of electric generation based on the integrated functions of the Project and the bargain originally reached that permitted PG&E and its predecessor to develop the Project, while requiring EID to forgo additional water rights. In the alternative to dismissal, EID therefore sought consolidation of A.97-11-012 with the Commission's investigation into the out-of-service status of the El Dorado Project (I.97-11-026 discussed below).

EID had also argued that PG&E's Riverton WSS was unreasonable and was not the least-cost restoration alternative. As part of its application, however, PG&E had submitted testimony to demonstrate that the Riverton WSS was the most cost-effective restoration alternative that could meet PG&E's water supply obligation to EID on a sustainable, reliable basis given the geological instability and other problems that had long beset the Project area.

On January 15, 1998, a prehearing conference was held to hear argument on the motions to dismiss. No Commission decision or ruling either addressing or resolving the motions to dismiss or determining the status of the application was ever issued.

**F. A.97-12-020/I.97-11-026: PG&E General Rate
Case/El Dorado Project Out- of-Service Status**

On October 17, 1997, EID notified the Commission that the El Dorado Project had been taken out of service in January 1997 due to extensive flooding and that PG&E had determined not to restore and operate the El Dorado Project because its costs of restoration and operation would be prohibitive relative to its economic value. In response, on November 19, 1997, the Commission issued Order Instituting Investigation (I.) 97-11-026 pursuant to § 455.5 (c). As stated by the Commission:

"Section 455.5 (c) requires the Commission to institute an investigation when any portion of a utility's generation or production facilities has been out of service for nine or more consecutive months. PG&E's El Dorado project has now been out of service for more than nine months. PU Code Section 455.5(c) further requires that the rates associated with the plant be ordered by this Commission as subject to refund and that the hearing on the investigation be consolidated with the next general rate proceeding for PG&E."

By I.97-11-026, the Commission sought to address, among other things, the reasonableness of costs and expenses associated with the Project during the period that the unit was not in service. PG&E was ordered to establish a memorandum account for the purpose of tracking all costs associated with the El Dorado Project pending the outcome of the investigation, and I.97-11-026 was eventually consolidated with PG&E's general rate case, A.97-12-020.

Following this action, on December 16, 1997, the Commission issued D.97-12-096 in PG&E's generation PBR application, A.96-07-009. The decision recites a recommendation that EID had made in that proceeding "that an investigation be instituted to examine the effects of the El Dorado outage and resolve all related reasonableness issues in that proceeding." The decision deferred resolution of "issues related to the El Dorado outage" to I.97-11-026.

III. Conditional Asset Transfer Agreement (CATA)

By early 1998, PG&E and EID were embroiled in a contentious fight over the future of the El Dorado Project. PG&E and EID submitted to a dispute resolution process which culminated in the parties reaching a settlement in the form of the CATA. The "Entire Agreement" for the transfer of the "subject assets" is defined by the CATA as including (1) the CATA itself, setting forth the terms and conditions of the sale, (2) an agreement for a credit facility from PG&E

to EID, (3) the § 851 transfer application, and (4) a Standstill Agreement, freezing the litigation and other dispute processes between the parties, as well as related applications. Both the credit facility and standstill agreements were signed simultaneously with the CATA on April 6, 1998.

On that same date, PG&E also filed the present application, A.98-04-016, in which PG&E seeks authorization (1) to sell to EID under § 851, the El Dorado Project and associated rights in accordance with the terms and conditions of the CATA, (2) to relieve PG&E, concurrently with the transfer of the Project to EID, of its public utility obligations and duties associated with the delivery of water from the Project, (3) to approve PG&E's requested ratemaking treatment, and (4) to find that § 363 does not apply to the sale of the Project under the CATA. Section 363 provides, under specific circumstances, for utility operation of electric generating facilities for two years after their sale.

The CATA sale terms require EID to pay PG&E \$1.00 for the inoperable Project. Subject to Commission approval of PG&E's proposed ratemaking treatment for the sale, PG&E would pay EID \$17 million as a contribution in recognition of the "as-is" condition of the Project. Other principal terms and components of the proposed CATA include:

- EID purchases the Project "as-is, where-is."
- The only conditions precedent to closing the transfer are Commission approval of the § 851 transfer and compliance by EID with applicable CEQA requirements.
- Neither EID nor PG&E have unilateral, open-ended rights to terminate the CATA.
- No storm event, other casualty loss, or other change in condition of the Project is a basis for termination by either party.

- EID assumes the risk for casualty loss from and after the signing of the CATA.
- EID bears the risk if FERC does not allow the license transfer to occur.
- EID is solely responsible for all future Project costs, and is responsible for the future disposition of the Project, including regulatory, license, and environmental compliance, subject to certain conditions.
- EID is responsible for any future decommissioning costs, if required.
- The 1919 water supply contract and obligation to deliver consumptive water is terminated.
- At the closing, PG&E will pay EID the amount approved by the Commission for recovery by PG&E from electric ratepayers (requested at \$17 million).

In its application, PG&E seeks recovery of \$17 million from its ratepayers based on estimates of the costs that PG&E's electric ratepayers might otherwise bear in the absence of the CATA. This amount, if approved by the Commission for recovery through rates, will be paid to EID in recognition of EID's purchase of the Project in its present inoperable, "as-is, where-is" condition and for EID's assumption of significant risks and costs that electric ratepayers would incur if there were no sale. Those costs avoided by EID's purchase of the Project include the cost of decommissioning, loss of insurance proceeds to offset electric ratepayer responsibility for costs associated with catastrophic loss, and costs related to the existing water obligation. The sale will also ensure that electric ratepayers avoid any potential risks or costs associated with litigation related to the Project.

The application also states that the sale will achieve such public interest benefits as relieving PG&E of an obligation to provide consumptive water

service, which is not a core business for PG&E, and, in turn, transferring that obligation and the Project to local control. Further, PG&E states that transfer to EID represents the best opportunity, in the face of PG&E's license surrender, for returning Project 184, a renewable electric generation unit, to operational status to the benefit of all California electric customers.

Under the terms of the credit facility agreement,³⁸ PG&E shareholders are obligated to extend to EID a line of credit for up to, but not to exceed \$3.5 million. If the Commission approves recovery of the requested \$17 million through electric rates, the credit facility will be unnecessary. If the Commission approves an amount less than \$17 million for electric rate recovery, PG&E will loan to EID one-half the difference between \$17 million and the approved amount, up to the \$3.5 million cap. Repayment would be triggered by electric production from the Project. If EID is unable or unwilling to restore the Project to hydroelectric operation, the line of credit is forgiven and can be used by EID to assist in the cost of decommissioning. The line of credit is a PG&E shareholder liability.

IV. Status Of Proceedings and CEQA Review

A. Existing Proceedings

As prescribed by the CATA, PG&E and EID also executed, concurrently with the CATA, a "Standstill Agreement" related to existing litigation between the parties. Consistent with that agreement, the 1995 ASA arbitration, the superior court litigation, A.97-11-012, the investigation portion of A.97-12-020/I.97-11-026, and PG&E's applications to FERC for license surrender

³⁸ Exhibit 17; CATA ¶ 9.3.

and amendment, all discussed above, have either been stayed or deferred pending the outcome of this application. Arbitration of the 1919 Contract compelled by the Superior Court in PV-002778 now stands suspended. In response to joint pleadings and correspondence by PG&E and EID, A.97-11-012 and A.97-12-020/I.97-11-026 were stayed, respectively, until resolution of this application.

B. FERC License Transfer

In April 1998, PG&E applied for transfer of the Project 184 license to EID.

FERC, on April 2, 1999, issued its "Order Approving Transfer of License" (87 FERC ¶ 61.022) wherein it found "[EID] is qualified to hold the license and to operate the property under the license, and it has agreed to accept all the terms and conditions of the license and to be bound by the license as if it were the original licensee." FERC determined that:

Transfer of the license for the El Dorado Hydroelectric Project No. 184 from Pacific Gas and Electric Company to El Dorado Irrigation District is approved, subject to Pacific Gas and Electric being retained as co-licensee for the limited purpose of meeting decommissioning costs until further order of the Commission.

We take Official Notice of the FERC order.

C. CEQA Review

The Scoping Memo of October 21, 1998, states: "The EIR being prepared in conjunction with this application will be considered when reviewed." Under CEQA, EID is the lead agency and intends to comply with any CEQA requirements in the acquisition of the El Dorado Project. EID retained consultants to prepare a Draft EIR on the environmental impacts of the proposed transfer of the El Dorado Project to EID. That draft report was issued April 30,

1999.³⁹ Restoration of the Project to both hydroelectric generation and water supply is EID's preferred project alternative. CEQA compliance by EID is a condition precedent to the closing of the CATA. The Final EIR (SCH #98082005) prepared by the El Dorado Irrigation District was approved and certified by the EID Board of Directors on July 12, 1999.

We are charged with independently reviewing the results of the environmental review and balancing those conclusions and determinations against other public interest factors. As a responsible agency, we are required to make our own findings and statement of overriding considerations after reviewing the lead agency's certified EIR. We have reviewed the EIR prepared by EID and deem it sufficient in accordance with CEQA. Because of the length of our findings, they have been prepared as a separate attachment to this order. (Appendix B.) Our statement of overriding considerations is included as Appendix C.

V. Issues

The following principal issues have been raised in this application:

- Is the sale of the El Dorado Project to EID pursuant to the terms and conditions of the CATA reasonable, in the public interest, and consistent with applicable law and policy?
- Will EID receive any measurable benefits from this transfer and sale not otherwise accounted for in the CATA and this application?
- What is the reasonable amount, if any, to be paid by PG&E to EID?

³⁹ It is in four volumes, marked Exhibits 25a, 25b, 25c, 25d and received.

It is clear from the mere recitation of the facts that the sale must be approved. To deny approval would: (1) cause PG&E to decommission the power portion of the Project at a conservatively estimated cost of over \$11.7 million; (2) continue PG&E's responsibility for public utility water service at a disputed contract rate which could result in PG&E's incurring a negative \$40 million cost over time, and (3) deprive the people of California of renewable hydroelectric power. What is at issue is the reasonableness of the \$17 million payment PG&E will make to induce EID to take the Project and abandon its 1919 Contract claim.

VI. Position of the Parties

A. PG&E's Position

PG&E asserts that the \$17 million payment is reasonable and fair to ratepayers. If approved PG&E's electric ratepayers will be relieved of their obligation to pay for decommissioning, will receive the full benefits of PG&E's insurance recovery following the 1997 storm, and will be relieved of any long-term responsibility resulting from PG&E's water delivery obligation to EID.

First, if the sale to EID does not go through, PG&E contends that it will be ordered to decommission some portions of the Project, the extent of which is a matter for FERC to determine. Because of PG&E's public utility water delivery obligation to EID and the long-standing recreational uses of the upper reservoirs, FERC will probably not order complete removal of the Project and restoration of the land to its original state. Instead, assuming PG&E proceeds with the Riverton alternative, PG&E expects that the most likely level of decommissioning would include:

- Removal of the diversion dam at Kyburz;

- Removal of the upper nine miles of the canal and ancillary facilities;
- Removal of the penstock, and modifications to the forebay outlet to the powerhouse;
- Dismantling and removal of the powerhouse generation equipment;
- Removal of or modifications to other non-generation facilities; and
- License surrender administration and mitigation.

PG&E says that EID and ORA agree that some level of decommissioning will be required if this sale does not go through, and that electric ratepayers are responsible for payment of the decommissioning costs. Decommissioning of a generation facility which is retired during the transition period (as would be the case with this Project if it is not sold to EID) is recoverable as a transition cost. (D. 97-11-074, Finding of Fact 45.) As part of this sale, EID assumes responsibility for future decommissioning of the Project, and PG&E would not ask ratepayers for any future decommissioning costs.

Therefore, through this sale, PG&E's ratepayers avoid decommissioning costs associated with the Project.

PG&E and EID estimate the cost of decommissioning at \$11.7 million, based on the cost necessary to accomplish the partial decommissioning of the power-portion-only part of the Project. PG&E believes this estimate is conservative because both FERC and the U.S. Forest Service must agree before the full scope of the decommissioning, remediation, and site restoration can be known. PG&E and EID say there are other risks that could significantly increase the scope and cost of decommissioning which were not included in the \$11.7 million estimate.

Second, PG&E asserts that electric ratepayers will receive the full benefit of the insurance proceeds collected by PG&E for the 1997 New Year's storm and flood. The 1997 New Year's storm and flood damaged PG&E facilities throughout its service territory. Under PG&E's insurance policy, PG&E settled its insurance claim for \$50 million. The settlement was reached on a company-wide basis, without allocating amounts line-by-line or project-by-project. In reaching the settlement, PG&E documented total storm damage estimates in excess of \$100 million. Damage to the El Dorado Project was a significant component of the claim. Included in the estimates were an estimate of the Riverton water supply system construction costs of \$8 million to \$10 million, EID estimates of the costs to install a bypass tunnel of \$15 to \$18 million, and EID estimates to repair and replace the canal without a bypass tunnel of \$23 to \$29 million. ORA has admitted that if the sale to EID does not go through, it would be fair to allocate part of the insurance proceeds to the restoration of the El Dorado Project for water production.

Third, PG&E maintains that electric ratepayers will be relieved of any remaining obligations with regard to PG&E's water delivery obligations to EID. PG&E argues that historically, costs of the El Dorado Project have been included in electric rate base and the Electric Department revenue requirement and recovered through electric rates. The Commission treated the fixed price water deliveries to EID under the 1919 Contract with PG&E's predecessor as an ancillary service to power production, with the revenues recorded as electric other operating revenue. (Ex. 1, p. 2-1.) The water delivery contract was a necessary step in allowing Western States, PG&E's predecessor, to develop the El Dorado Hydroelectric Project (See D.6436 (1919) 16 CRC 947) and, as such, is a generation-related obligation under § 367. All of the costs associated with the El Dorado Project, including the 1919 Contract, must be considered in

determining the market value of the facilities, as required by § 367, and all resulting uneconomic costs must be recovered over the transition period. To the extent the costs of providing water under the contract exceed the revenues received under the contract, the resulting cost is to be recovered through the TCBA.

Fourth, PG&E points out that in the water rate case (A.97-11-012), it proposed a hundred-fold increase in the price of water to EID to cover the costs of delivering water under the 1919 Contract. PG&E explains that this rate would only have recovered 20 percent of the costs of the water storage and conveyance facilities, such as dams and waterways, that had been used for power production and water delivery. PG&E maintains that the remaining 80 percent of the costs of the water storage and delivery facilities and 100 percent of the costs of the power production facilities would continue to be recovered from electric ratepayers, even if PG&E had won the water rate case.

PG&E contends that the water rate case contains substantial risks for electric ratepayers. PG&E maintains that if the parties knew the outcome of the water rate case, the agreement in this proceeding would have been different. At the time the parties negotiated the CATA, the outcome was very open. PG&E believe that both sides had strong arguments. PG&E's argument relies on § 451, that all rates charged by utilities be just and reasonable; however, EID also had a powerful argument: a valid Commission-approved contract for water at a fixed price. The uncertainty of the outcome is one of the factors that enabled PG&E and EID to reach this compromise agreement.

PG&E discusses the contingent additional risks for electric ratepayers from disapproval of the sale to EID. If PG&E were to win the water rate case and charge EID \$325/acre-foot for water, electric ratepayers would still be required to pick up the uneconomic sunk costs of the generation Project. If EID were to

win the water rate case and PG&E remained obligated to operate and maintain a system to deliver water for which PG&E received only \$3.50/acre-foot (or any amount less than the \$325/acre-foot requested in A.97-11-012), PG&E would argue that the resulting losses be reflected in the market valuation of the hydroelectric generation Project and that the losses be added to the uneconomic generating asset costs to be recovered through the TCBA under § 367. PG&E analogizes the risk to that of a Qualifying Facility contract buyout or the buyout of a power purchase contract, both of which would be recoverable through the TCBA.

PG&E states that although the electric ratepayer risk is uncertain and requires two contingent outcomes – PG&E loses the water rate case and the Commission agrees that the unrecoverable water delivery costs are the result of and part of an uneconomic electric generation facility – it is a real risk and has real value. Even ORA recognizes that there is a risk to electric ratepayers if PG&E's water obligation to ratepayers is not extinguished by this sale of the Project to EID. EID has calculated the net present value of the water delivery obligation at almost \$40 million.

B. EID's Position

EID believes that it is imperative for the Commission to review the CATA, the Standstill Agreement, the credit facility agreement, and this application as the "Entire Agreement", an approach based on PG&E's and EID's explicit intent. It argues the \$17 million payment to EID is not a severable term of the CATA, but an integral part of an entire comprehensive settlement. EID believes that the \$17 million fairly represents the compromises EID made with respect to its claims against PG&E, the extinction of existing PG&E obligations to EID, and EID's assumption of risks and costs associated with the Project that would have been borne by electric ratepayers.

In EID's opinion a \$0 payment to EID is insupportable and inequitable. Further, a reduction in the \$17 million proposed to be recovered in rates could jeopardize the closing of this sale by adversely affecting CEQA review, one of the two conditions precedent to closing the CATA. EID maintains that either our denial of the Project transfer to EID or EID's inability to comply with CEQA could result in a return to the contentious litigation that has been placed on hold pending the resolution of this application.

In D.96-06-061, the Commission addressed the sale of another PG&E hydroelectric facility. In that case, PG&E had applied to sell its Angels and Utica Hydroelectric Projects to the Calaveras County Water District. Like the El Dorado Project, these projects also provided consumptive water service as part of their hydroelectric operations. In that case, the Commission approved the transfer on the grounds that the public interest was served because it was more cost-effective for PG&E to sell the plant than retain it, "[w]ater service was not a core PG&E activity", and the buyer was "more appropriately situated as a county water district to provide the service than is PG&E."⁴⁰

With respect to the El Dorado Project, no opposing party to this proceeding has contested PG&E's determination that the Project is no longer cost-effective for PG&E to operate and restore. In fact, ORA has specifically concluded:

"The El Dorado Project is not needed by PG&E to maintain the operation and reliability of PG&E's electric system. The project has not been designated a must-run facility by the Independent System Operator (ISO). Therefore, pursuant to

⁴⁰ D.96-06-61, mimeo. at p. 7.

Public Utilities Code Section 851, PG&E should be authorized to transfer the El Dorado Project to EID."⁴¹

EID argues that the testimony of both the EDCWA and the El Dorado Citizens for Water (Citizens) makes clear that water supplied from the Project is the "lifeblood" of El Dorado County.⁴² Both of these parties agree that a reliable and economical water supply is critical to the domestic and agricultural customers in El Dorado County. EDCWA and Citizens further share the belief that local control of the Project by EID will help to ensure the continuation of the water supplied by PG&E to EID from the Project at a level and cost upon which customers have long depended. A County witness testified that EID could best ensure "economic reliability" of the water supply and would be more responsive than PG&E to local needs.⁴³ It was the opinion of Citizens that management efficiencies and economies had been achieved by EID in operating the Project successfully in 1996, and these benefits could again be realized by EID by approval of the Project's transfer to EID pursuant to the CATA.⁴⁴

Under these circumstances, EID asserts, it is clear that the transfer of the Project to EID is in the public interest. With the approval of the CATA, the Project will be transferred to EID which is more appropriately situated to provide water service than PG&E. With the completion of the FERC license transfer to EID and with a preferred CEQA alternative of electric generation

⁴¹ Ex. 4, at p. 5.

⁴² A view also held by EID. (RT at 331).

⁴³ RT at 590-593.

⁴⁴ RT at 576 - 577.

restoration, EID is also poised to resume hydroelectric operations and to continue to provide an economic supply of water to El Dorado County consumers.

EID's witnesses testified that prior to negotiation of the CATA, PG&E's irrevocable decision to relinquish its FERC license for the Project would have an unavoidable, significant economic impact on electric ratepayers in the form of decommissioning and related environmental costs. Electric ratepayers also face significant risk and costs associated with Project litigation, the continuing water supply obligation to EID, and ongoing Project obligations and maintenance.

EID points out that at the time of the negotiations, it was PG&E's position that its ratepayers would be obligated for such costs. From its standpoint, EID was unwilling to take on the responsibilities and costs associated with a badly broken Project with a significantly negative value. In order to accurately and fairly address the costs and risks related to a sale of the Project to EID, EID retained William Marcus as its consultant, and PG&E utilized Richard Weingart. Mr. Marcus and Mr. Weingart were charged with the responsibility of determining the benefits of the sale to electric ratepayers and the costs that would be incurred by electric ratepayers in the absence of a sale. These experts were also to determine a payment amount for the Project that would reflect those costs, as well as EID compromises on its claims against PG&E and benefits, if any, to EID in purchasing the Project. Their recommendation was that the transfer should include a payment of \$17 million paid to EID to be recovered in rates.

It is EID's position that the \$1 payment to PG&E and the \$17 million payment to EID are based on a reasonable and well supported assessment of ratepayer risks and benefits, and financial compromises on the part of EID. It is also EID's position that these sale terms fully account for any benefit to EID from

the sale and fairly reflect the market value of the El Dorado Project. EID asserts that while the exact costs to be avoided by ratepayers associated with this sale are not yet fixed, it is most likely that the total amount of ratepayer costs avoided by this sale would have been significantly greater than that represented by the \$17 million payment from PG&E to EID.⁴⁵

EID claims that PG&E's and EID's analysis of full Project restoration by PG&E demonstrates that an estimated total, after-tax, net present value (NPV) of those costs would range from approximately \$41 million to \$86 million. Even when offset by an estimated \$21 million in NPV of after-tax generation benefits, EID maintains that the resulting net cost confirms that full Project restoration was not an economic alternative for PG&E since the costs of restoring and operating the Project were an estimated two to four times greater than the value of the power produced.⁴⁶ In other scenarios of restoration of the Project for water-supply only, coupled with generation facilities decommissioning, EID states that expected costs range from \$28.3 million to \$31.8 million.⁴⁷

In addition to the \$11.7 million decommissioning cost calculation, EID Witness Marcus also calculated the net present value of the cost of the obligation

⁴⁵ Ex. 1, at p. 3-3. In addition to assuming the water supply obligation and all risk of permanent repairs to the Project under the CATA, EID states that it is also incurring costs that benefit electric ratepayers such as O&M for the El Dorado Canal, temporary restoration of water supply, compliance with CEQA, FERC relicensing, and catastrophic liability. The estimate of decommissioning costs developed by PG&E and EID was based on partial decommissioning of the Project associated with the Riverton WSS and did not include all decommissioning risks and costs for which EID could eventually be liable. (Ex. 1, Ch. 3; Ex. 21, at p. 3-1, et al.)

⁴⁶ Id. RT at 456-457.

⁴⁷ Ex. 4, Attachment 2, ED-ORA-2-1-2.

by PG&E to deliver water to EID under the 1919 Contract. Mr. Marcus determined that cost to be almost \$40 million when calculated out for 30 years.⁴⁸ If the cost of this obligation were calculated out in perpetuity, Mr. Marcus testified that the cost of the obligation would be approximately \$47 million.⁴⁹ Mr. Marcus based his calculation on the assumption that the Riverton Water Supply System would be built.⁵⁰

Therefore, EID contends that a PG&E buy-out of its water supply obligation to EID could cost in the range of \$40 million to \$47 million, a cost that would likely be recovered as a generation-related obligation in CTC. Coupled with decommissioning costs conservatively estimated at \$11.7 million and similarly recovered through CTC, EID calculates that the impact on electric ratepayers would be close to \$60 million in the absence of the CATA. EID's witnesses testified that its motivation for acquiring the Project is simply to preserve the gravity method of conveying its existing water supply, in the most economical, reliable and environmentally sound manner (e.g., to offset maintenance costs.)⁵¹ EID believes maintaining the power generation component of the Project is a vital element of achieving these objectives. If EID had not negotiated to acquire the Project under the CATA, none of EID's objectives would have been met under the default direction for the Project, i.e., PG&E's

⁴⁸ Ex. 1, at pp. 3-8; Ex. 21, at pp. 3-8, 3-11, 3-12; RT at 234

⁴⁹ RT at 234, 237.

⁵⁰ RT at 255.

⁵¹ RT at 56-57, 375.

plan to construct the Riverton WSS and decommission the Project 184 generation facilities.

EID's witness said that nothing will change in terms of the financial risks that have been faced and assumed by EID, and those risks will only escalate with Project transfer. Those costs include the following: acquisition costs; CEQA and regulatory compliance, including FERC licensing and this application; Project generation restoration in 1995/1996; O&M; January 1997 storm repairs; temporary canal repairs in 1998; protection against catastrophic losses; powerhouse interconnection and metering; water storage and conveyance monitoring and control equipment installation; water system flume and canal lining replacements; dam reinforcement and replacement; and Project decommissioning liability.⁵² EID contends that it is neither fair nor justified to permit this transfer to serve as a basis to shift costs that PG&E ratepayers would have incurred to EID, with no payment for the assumption by EID of those costs and liabilities. Thus, EID believes that the \$17 million PG&E seeks to recover in rates is a fair and reasonable settlement of those costs in exchange for the benefit to ratepayers of fixing and, with the transfer, ending future cost responsibility for a Project that has benefited ratepayers for over 70 years.

C. ORA's Position

ORA's witness testified that the El Dorado Project is not needed by PG&E to maintain the operation and reliability of PG&E's electric system. The project has not been designated a must-run facility by the Independent System

⁵² Ex. 2, at p. 14.

Operator (ISO). ORA recommends that pursuant to § 851, PG&E should be authorized to transfer the El Dorado Project to EID.

He testified that PG&E's proposed ratemaking methodology is the same as has been used in fossil power plant divestiture proceedings. Gross sales proceeds are \$1 and there is a \$17 million payment to settle with EID, resulting in net sales proceeds of minus \$17 million. Adding in the net remaining book value of \$51 million results in a pre-tax loss of \$68 million. There is a \$28 million tax benefit associated with this loss on sale, resulting in a net \$40 million debit to the TCBA. Consistent with D.98-12-107, the actual plant and depreciation reserve balances at the time the sale closes should be used to determine the resulting debit to the TCBA. ORA does not object to PG&E's proposed ratemaking methodology. However, ORA does object to the proposed sales price of \$1 and the payment to EID of \$17 million. ORA believes that these terms are unreasonable and recommends that the Commission impute a sales price of \$2 million and deny recovery of the \$17 million payment to EID. Using this method and incorporating the \$51 million book value results in a loss on sale of \$49 million, as compared to PG&E's proposed \$68 million loss. ORA recommends that the Commission use the \$2 million sales price agreed upon in the ASA because PG&E and EID failed to close the sale in a timely fashion. If they had closed the sale prior to the New Year's storm damage, PG&E would have received \$2 million from EID rather than the current proposal to pay EID \$17 million. ORA contends that ratepayers should not be held responsible for the fact that PG&E and EID failed to complete the 1995 ASA in a timely fashion.

ORA's witness cited additional reasons to deny recover of the \$17 million payment. The purpose of the \$17 million payment to EID is intended to restore or decommission the Project, and also settle outstanding legal claims between PG&E and EID over the Project. However, under its 1919 Contract with

EID, PG&E has no obligation to restore the Project. Moreover, PG&E has determined that restoration of the hydroelectric portion of the Project would not be cost-effective. Restoring both the water delivery and electric generation portions of the facility is unnecessary, expensive, and overly generous to EID. PG&E estimates that restoring water delivery to EID without repairing the Project's hydroelectric facilities would cost approximately \$9.3 million. This is significantly less than the \$17 million PG&E proposes to pay EID. ORA believes that ratepayers should not be held responsible to pay for EID's entry into the generation business, particularly for a project which is not expected to be cost-effective. ORA's witness concluded that PG&E should neither fund the possibility that EID will decommission the Project, nor compensate EID for outstanding legal claims.

In its Opening Brief ORA has changed its position. While ORA agrees that the transfer should be authorized, it no longer recommends a \$2 million payment to PG&E from EID. Rather, ORA recommends that the benefits of the transfer be reallocated. ORA now argues that the CATA fails to reflect fairly the benefits of the proposed transfer to EID, PG&E, and electric ratepayers. First, ORA contends that, whatever the cost of restoration, EID gains a valuable generational resource, local control of 15,080 acre-feet of water, and an opportunity for an additional 17,000 acre-feet. Second, ORA points out that PG&E is released from its obligation to deliver water to EID (especially without adequate compensation) and escapes liability for some \$150 million in damages claimed by EID. And, third, ORA argues that electric ratepayers will avoid the costs of decommissioning the Project. ORA believes these benefits can be achieved by EID's receiving the Project without payment or compensation chargeable to ratepayers and PG&E's relinquishing the net book value of the Project and any debit to its TCBA. ORA believes this result is reasonable, given

the failure of EID and PG&E to reflect in the CATA the value to them of the proposed transfer. Had it not withdrawn from the ASA and instead submitted a timely application for its approval, PG&E would not today have to face these consequences. ORA concludes that the Commission should condition approval of the proposed transfer on the requirement that PG&E remove the net book value of the Project from its ratebase without any corresponding adjustment to its TCBA.

D. The League's Position

The League's primary contention is that the proposed transfer should not be approved because PG&E's presentation is incomplete. It argues that PG&E failed to present any competent evidence establishing the reasonable value of the assets it proposes to transfer. The League maintains that PG&E failed to assign a value to even one acre of the scores of acres of real property it proposes to transfer. Moreover, the League asserts that PG&E failed to provide any valuation for the extensive water rights it is transferring. The League discounts PG&E's evidence purporting to conclude that the water rights to be conveyed have a negative value, stating that PG&E understates the value of the 15,080 acre-feet of water currently delivered and ignores the value of the future water rights that ownership and control of the reservoirs in question would confer on EID.

PG&E's presentation is also incomplete, argues the League, because it fails to provide a credible basis for its proposed \$17 million payment to EID. The League maintains that the cost of repair of the damage from the January 1, 1997, storm to the facilities in questions is grossly inflated because (1) EID has already repaired the facilities necessary for water delivery at a cost of only \$850,000 and (2) neither EID nor PG&E has committed to restoring the hydroelectric facilities that were damaged in this storm. The League contends that PG&E's estimate of

the decommissioning costs that it would otherwise incur if the Project were not conveyed to EID is similarly exaggerated. Since it is undisputed that the water-delivery facilities would remain in place, there would be no need to decommission them. Thus, the only facilities that would be decommissioned in the event the hydroelectric generating plant is not repaired are the penstock and the powerhouse. Since the salvage value of the powerhouse equipment is equal to its cost of removal, PG&E would not incur any significant decommissioning expense except for removal of its penstock. Further, PG&E's estimate of the cost of future water deliveries to EID should PG&E retain ownership of the Project is likewise overstated, since as a public utility, PG&E has the right to recover the cost of delivering this water and has already filed an application now pending before this Commission to do just that. PG&E fails to provide an adequate basis for determining the value of the assets proposed to be transferred to EID, much less to support its request that ratepayers bear the \$67 million cost PG&E seeks to impose on them. PG&E's application must therefore be rejected.

The League asks us to reverse the rulings of the Assigned Commissioner and Presiding ALJ which denied the League's position that this Commission has jurisdiction to consider, and should have addressed here, the impacts of PG&E's proposed transfer on public trust resources including fish and wildlife, and related recreational uses, of the South Fork of the American River and its tributary lakes. The League also reiterates its position that the validity of PG&E's claimed consumptive water rights to the four reservoirs in question (Caples, Silver, Aloha, and Echo lakes) is germane to a determination of the value of the assets PG&E proposes to transfer, and therefore testimony thereon should have been allowed in this proceeding. Finally, the League also reiterates its position that the evidentiary hearing in this matter was scheduled prematurely since the EIR that EID is preparing in conjunction with this application has not

yet been completed and circulated to the League and other interested parties for review and comment.

E. Other Parties' Positions

The El Dorado County Water Agency, the California Farm Bureau Federation, and the El Dorado County Citizens for Water all support the application as proposed by PG&E for the same reasons advanced by PG&E and EID. They all three particularly stress the importance of local ownership of the Project water supply that delivers water to approximately 50% of the County's residents.

VII. Discussion

During the evidentiary phase of this application there was uncertainty regarding FERC's response to the proposed transfer of the Project to EID. That uncertainty was reflected in the possibility of PG&E's restoring the hydroelectric facilities and continuing electric service as it had been doing since 1928. FERC, having approved the transfer, has removed that uncertainty. PG&E will not resume providing power. Unless the transfer of facilities is approved by this Commission, the power facilities will be decommissioned by PG&E (at considerable cost to PG&E's ratepayers) and California will lose 21 MW of renewable power. Given the EID alternative, this result is unacceptable. The transfer, in addition to increasing the probability of restoration of electric power, will also relieve electric ratepayers of the possibility of having to provide water to EID at \$3.50/acre foot. Pursuant to § 851, we will approve the transfer, which is in the public interest.

The issue that must be resolved is the reasonableness of the \$17 million payment by PG&E to have EID take the facilities and assume PG&E's obligations. We recognize that the \$17 million is a settlement figure arrived at by

PG&E and EID in full knowledge that both parties expected the money to be a charge against ratepayers. They were negotiating with ratepayer money; not the arms-length negotiation that could be accepted without reservation. The \$17 million could as easily have been \$12 million or \$22 million and the evidence would have been exactly the same. We believe, for the reasons stated below, that \$15 million is reasonable. If the sale is approved, PG&E's electric ratepayers will be relieved of their obligation to pay for decommissioning, will receive the full benefit of PG&E's insurance recovery following the 1997 New Year's storm and flood, and will be relieved of any long-term obligation resulting from PG&E's water delivery obligation to EID. The value of those benefits to electric ratepayers matches the \$17 million that ratepayers are asked to contribute. For EID's part, it obtains control over its water supply and avoids paying \$325 acre-foot for water, plus it obtains other advantages. Those benefits must be factored into the compensation.

A. Benefits to Ratepayers

1. Relief from Decommissioning Costs

PG&E and EID estimated that decommissioning costs would be \$11.7 million. This number was untested, but is the only estimate based on an analysis of the work to be done. ORA did not perform an independent analysis, but did critique the applicants'. Adding and subtracting various components of applicants' analysis based on changing assumptions, ORA was of the opinion that the cost of decommissioning could be \$2.7 million, or \$9.4 million, or \$10.6 million. Those assumptions considered whether water delivery would be restored and the design of the water delivery system.

In estimating the potential cost of decommissioning, we will adopt PG&E's \$11.7 million estimate (which assumes that PG&E would provide water

by constructing its Riverton System and would decommission its power facilities). We acknowledge there is no independent estimate of the cost of the level of decommissioning proposed by PG&E, nor is it certain that PG&E's proposal is the most cost effective. But ORA's range of values from \$2.7 million to \$10.6 million, depending on assumptions, is too speculative to out-weight PG&E's more concrete estimate. We find that by EID's assumption of the Project PG&E's ratepayers will save \$11.7 million in decommissioning costs.

2. Insurance Proceeds

If the sale to EID does not go through, a portion of the insurance settlement will be applied to the repairs, whether the Riverton pumping project or a different project is ultimately constructed. By avoiding that allocation, electric ratepayers benefit by having the entire insurance payment applied to reduce other damage repair costs from the 1997 New Year's storm and flood. Depending on how one does the calculation, the tangible net benefit to electric ratepayers from the insurance effect could be from \$4 million (one-half of the low estimate of the cost of the Riverton water supply project) to \$29 million (the high full costs of restoring the canal system). Taking the most conservative estimate of the allocation, we find ratepayers benefit by \$4 million by this transfer, (although, to the extent any part of the \$17 million payment is allocated to insurance savings, those savings are reduced).

3. Water Delivery

The most elusive component of the \$17 million payment is the value of EID's claim regarding the water delivery obligation of PG&E. We have set forth the positions of PG&E and EID above (pp. 32-34). EID calculated the value of PG&E's obligation at \$40 million. EID has been paying approximately \$3.50/acre foot since 1919 – over 80 years. It is not unreasonable to believe that a

court would render judgment for EID on the 1919 Contract. On the other hand, should PG&E win the water rate case there would still be the sunk costs of the power production facilities to be recovered from electric ratepayers.

What is very clear from the evidence is that the area in which PG&E must maintain water delivery facilities is very unstable, subject to floods and landslides. Maintenance costs are difficult to predict and could easily force water rates to exceed a reasonable level. PG&E provides water delivery service as ancillary to power generation. Without power generation it is to PG&E's (and PG&E's ratepayers') best interest to be relieved of its public utility water obligation to EID. The ability of PG&E to settle the water claim and relieve ratepayers of potential costs to provide water in perpetuity has great value. We need not determine that value other than to comment that a \$17 million payment to cover the cost of decommissioning, allocation of insurance proceeds, and relief from a multi-million dollar water claim, is reasonable.

However, our inquiry does not stop here. Both PG&E and EID assert that the value of the Project to EID should not enter into the payment calculation, stating that the value to the buyer (EID) is irrelevant, and only the value to the seller is relevant. We have a different view. In an arms-length negotiation the resulting agreement represents the expected value each party assigns to its own interest. In an auction the value to the buyer is obvious and the value to the seller is irrelevant. In this application the negotiation was conducted assuming ratepayers would absorb the payment; this is not an arms-length transaction. Whatever amount we authorize PG&E to pay will be a negative market valuation of an uneconomic generating asset cost to be recovered as a transition cost under Pub. Util. Code §§ 367 and 367(b). A market valuation must incorporate value to the buyer. It takes at least two to make a market.

B. Value to EID

The value of the transfer of the Project to EID is evident. EID will control its own water supply; it becomes eligible to receive 17,000 acre/feet of additional water rights; it avoids the possibility of paying PG&E \$325/acre-foot for water; and it has the opportunity to provide hydroelectric power.

EID has valued its right to 15,080 acre-feet of \$3.50 acre-foot water at \$40 million and the value of its opportunity to obtain water rights to an additional 17,000 acre-feet at \$75 million (Ex, 19, demand letter). While relinquishing a substantial contract claim has considerable value, we give little credence to the hyperbole of a litigation letter. EID's ability to obtain the additional 17,000 acre-feet of water rights is not foreclosed should we fail to approve this application. However, the controversy over the 1919 Contract is a complex matter with serious and expensive consequences for the loser. We express no opinion on the merits except to note the costly impact to the losing party. From EID's point of view, should PG&E prevail in its water rate case the cost of water to EID would increase from approximately \$53,000 per year to over \$4,900,000 per year.

Finally, both parties concur, and we agree, that \$17 million is needed by EID to complete its repairs and reestablish permanent facilities for water delivery and reconstruction of the power plant. Without the \$17 million payment, or an amount approaching \$17 million, it would be difficult for EID to complete its planned restoration. Nor must we fail to consider that FERC has specifically retained PG&E as co-licensee for the limited purpose of meeting decommissioning costs. Should we approve the transfer without adequate funding, PG&E and its ratepayers would remain liable for decommissioning costs. Absent adequate compensation by PG&E transfer of the Project could cause more problems, expenses, and lawsuits than outright denial of the transfer.

Although \$17 million is not an unreasonable amount to be paid to induce EID to take the Project, we authorize \$15 million as a charge against ratepayers. This results from two causes: (1) the fact that the negotiated \$17 million was not arms-length and (2) the unusual nature of the CATA.⁵³

Under the terms of the CATA, EID is obliged to take the Project whether or not the Commission authorizes \$17 million, or any amount.⁵⁴ EID has, therefore, recognized the substantial benefits it receives from the transfer and acknowledges that this Commission might also recognize those benefits and act accordingly. EID has agreed to assume all decommissioning costs (CATA, ¶ 3.2(c)) regardless of receiving any payment (other than a \$3.5 million credit) from PG&E. In the CATA and accompanying credit facility agreement, PG&E has also recognized that the \$17 million payment might be reduced.

Under the terms of the credit facility agreement, PG&E's shareholders are obligated to extend to EID a line of credit not to exceed \$3.5 million, if the Commission approves an amount less than \$17 million for electric rate recovery. PG&E will loan to EID one half the difference between \$17 million and the approved amount, up to the \$3.5 million cap. If EID is unable or unwilling to restore the Project to hydroelectric operation, the line of credit is forgiven and can be used by EID to assist in the costs of decommissioning. The line of credit is a PG&E shareholder liability. Clearly, PG&E foresaw the possibility of approval with less than \$17 million and the need of EID to have decommissioning funds.

⁵³ Unusual agreements are not unknown to regulation. See D.99-03-022, mimeo. p. 6, fn. 2.

⁵⁴ RT at 194, 215 -218; see also, RT at 566 (Myers (EID Counsel); McLennan (PG&E Counsel)).

From the position of the ratepayers, who will pay the amount, whether it be \$17 million or some lesser payment, there is no doubt EID has benefitted from this transfer. Those benefits have been discussed above and must be factored into the payment. While admittedly a judgment, we find that \$2 million is a reasonable quantification of EID's benefits from this transaction; therefore we will authorize a \$15 million payment by PG&E to be a charge against ratepayers.

ORA's position is without merit. Originally ORA sought to have the transfer conditioned on the imputation of a \$2 million payment by EID to PG&E, as contemplated by the 1996 ASA, on the theory that the parties should have obtained Commission approval before the 1997 storm damage. This theory is untenable. The ASA was not signed until June 1996 and there were many details still to be worked out. Even if PG&E had filed an application in June 1996, given the vehement opposition by the League and the unknown position of ORA, there is no reasonable timetable that would have resulted in a final decision by the Commission prior to January 1, 1997. Perhaps recognizing this, ORA, in brief, has changed its position. Now it recommends that EID receive the Project without compensation and that PG&E relinquish the net book value of the Project and any debit to its TCBA. PG&E has responded:

"ORA's new recommendation is in direct contradiction to the Commission's Preferred Policy Decision (Decision 95-12-063. Modified by Decision 96-01-099), AB 1890, the CTC Decisions (Decisions 96-06-060, 97-11-074 at Findings of Fact 19, 20 and 21, and 97-12-029 at Finding of Fact 3 and the text at page 21) and the Decisions issued in PG&E's other generation divestiture proceedings (Decisions 97-09-046, 97-12-107 and 99-04-026) which allow recovery of uneconomic generating assets and obligations through CTC. The cost recovery mechanisms for uneconomic generation costs have already been established by the Legislature and the Commission and can not be changed for El Dorado

because ORA's attorney doesn't like this deal. All uneconomic generation costs are recoverable through the TCBA and netted against the benefits of economic plants. The El Dorado Project happens to be an uneconomic plant for which there are sunk costs that must be recovered. Ratepayers have already received the benefits from the sales of PG&E's economic plants which are far in excess of the loss associated with this sale." We agree with PG&E

For the most part, the League's arguments mirror those of ORA and will not be repeated. We have discussed above the reasonableness of the \$17 million payment and the evidentiary foundation which supports it. The League did, however, put in issue the value of the water and the land to be transferred. It claims the water rights have a value of \$52 million. We disagree. The value of the right to receive 15,080 acre-feet of water from PG&E has no value to EID as these rights are dedicated to EID. EID's rights to this water do not change as a result of this transfer. Whatever the value is to EID, it is the same before the transfer as after the transfer.

The value of the land to be transferred is a separate issue. The League's witnesses asserted that EID would stand to reap vast profits by selling off the land associated with the Project. A PG&E witness testified that approximately 38 acres of land, with a market value of approximately \$100,000, could be sold. The League countered by asserting that two small parcels adjoining Caples Lake were worth millions of dollars if developed as a resort. PG&E points out the lands in questions are dedicated for Project use and are subject to the terms and restrictions of the FERC license. Numerous provisions in the FERC license require PG&E to preserve and protect Project lands for recreational, scenic, and environmental values, and place severe restrictions on the licensee's ability to commercially develop or sell Project lands. (See, e.g., Order Issuing License, 13 FERC ¶ 62,269 (1980), Articles 35, 36, 39, 40, 48, at pages 63,345 though 63,348.)

The FERC Order also incorporates federal regulations requiring licensees to acquire and include land to assure optimal recreational development of the recreational resources afforded by a Project. (See 18 CFR Part 2, Section 2.7.) Neither PG&E nor a successor licensee can simply proceed with developing Project lands without release of those restrictions.

We will not place a speculative value on the land to be transferred. The land is currently under federal and state restrictions. It is needed to provide water and power. We will not incorporate speculation upon events or combinations of occurrences which are not shown to be reasonably probable into this valuation. PG&E's estimate of \$100,000 for the land is reasonable.

C. Value to PG&E

Although we have deprecated the hyperbole of a litigation letter that demands \$150,000,000 from PG&E (Exh. 19, July 9, 1997 letter), we did not mean to imply that the potential for substantial corporate liability was removed. The July 9, 1999 letter from EID accusing PG&E of a "wrongful and material breach of the Asset Sale Agreement and O&M Agreement. PG&E's actions also constitute Willful Action..." is asserting conduct by PG&E which could not be passed off as an obligation of PG&E's ratepayers. PG&E has a significant economic interest in settling a potential lawsuit. Additionally, in the water rate case (A.97-11-012) there is no guarantee that should EID prevail, PG&E would be able to charge all costs of providing water in perpetuity to its electric ratepayers. PG&E, in oral argument, recognized this possibility (R.T. 801).

We conclude that the CASA provides benefits to PG&E's shareholders that are not reflected in the \$17 million payment. PG&E's argument that it is sufficient that the ratepayers benefit by \$17 million falls short. It does not consider benefits to PG&E (nor EID, for that matter). Because of quantifiable benefits to ratepayers – elimination of decommissioning costs, avoiding potential

water rate case costs, and reallocation of insurance recovery – we find no reason to further reduce the \$15 million payment. Rather, we expect PG&E to assure the FERC that the amount paid to EID is sufficient to absolve PG&E from all decommissioning costs.

We have one further comment. We are concerned that PG&E and EID failed to bring ORA into the negotiations before positions hardened. Recently we considered our QF restructuring approval process, seeking to accelerate our regulatory response. To that end, we desire ORA and Commission staff to become part of the approval process at the earliest possible time. In D.98-12-066 in R.94-04-031, we made the finding “QF contract modification filings that have the support of ORA tend to be less controversial and more likely to garner ultimate Commission approval.” (Finding of Fact 15, mimeo., p. 20.) Although it might not have made a difference in this case, we take this opportunity to encourage parties to engage the services of ORA and Commission staff promptly.

VIII. CEQA Compliance

The issue of whether or not EID has the right to terminate the CATA if the Commission approves the transfer of the Project, but does not approve the \$17 million requested payment, was raised by EID. EID’s obligation to acquire the Project is not specifically conditioned upon the approval by the Commission of PG&E’s request to pay \$17 million to EID and to recover the \$17 million in electric rates, if the Commission approves the Project’s transfer to EID.⁵⁵

⁵⁵ RT at 194, 215 –218; see also, RT at 566 (Myers (EID Counsel); McLennan (PG&E Counsel)).

However, a condition precedent to EID's obligation to acquire the Project is that EID comply with CEQA.⁵⁶ We have considered the EIR prepared in conjunction with this application.

EID asserts that under the CATA, EID has the right to terminate if it cannot make the necessary and appropriate findings under CEQA that permit approval of the proposed project. The proposed project under EID's CEQA analysis includes the acquisition of the Project for purposes of restoration and operation of a hydroelectric and water supply project. Under that CEQA analysis, the Board of Directors of EID is required to "balance, as applicable, the economic, legal, social, technological and other benefits of the project against its unavoidable environmental risks" in determining whether to approve the proposed project.⁵⁷ If the EID Board of Directors were to determine that the benefits of the proposed project do not outweigh any unavoidable adverse environmental effects, the adverse environmental effects would be unacceptable under CEQA, and in compliance with CEQA, EID would be prohibited from acquiring the Project. The condition to closing in Paragraph 6.2 of the CATA

⁵⁶ Ex. 3, Section 6.2 at p. 16 **Conditions Precedent to Closing; CEQA/NEPA Compliance.** The obligation of EID to complete the transfer of the Subject Assets as contemplated hereby shall be subject to compliance by EID with applicable and necessary CEQA and NEPA requirements, if any. Notwithstanding anything in Section 6.5 to the contrary, this condition is a unilateral condition and is solely for the benefit of EID which bears all risk and cost associated with ensuring that the transfer of the Subject Assets complies with CEQA and NEPA requirements, if any. PG&E shall not have the right to terminate this Agreement in the event EID fails to satisfy this environmental compliance condition, but shall be indemnified from all loss, cost and expense associated therewith as provided in Section 5.5(c); RT at 71, 183, 375, 419.

⁵⁷ Title 14, California Code of Regulations, Section 15093.

would not have been satisfied, and under applicable law, EID could not proceed to close the transaction. We need not determine if EID's interpretation of the CATA is correct. It is sufficient to note that should EID refuse to complete the transfer legal proceedings could recommence and PG&E (and its ratepayers) would remain liable for decommissioning costs.

We believe the amount of money approved by the Commission for payment by PG&E to EID is a significant, material factor in the balancing process and will affect the ability of the EID Board of Directors to approve the Project. If we were to approve the transfer of the Project to EID, but disallow the entire \$17 million, that disallowance will result in a substantial, adverse economic impact that will reduce the economic benefit of the Project to EID, and negatively impact EID's ability to approve the Project. Approval of an amount substantially less than \$17 million will significantly increase the possibility that a transfer of the Project may not occur, leaving the parties in their pre-CATA circumstances. Those circumstances could have greater negative impact on electric ratepayers than had the CATA been approved with the payment of \$17 million to EID. Approving the transfer with a payment of \$15 million is reasonable and does not significantly reduce the economic benefit of the Project to EID.

IX. Applicability of Pub. Util. Code Section 363

As part of electric restructuring the Legislature specifically addressed the transition to and change in ownership of operating power plants from utility to non-utility owners. Section 363 was enacted to state:

"(a) In order to ensure the *continued* safe and reliable operation of public utility electric generating facilities, the commission shall require in any proceeding under Section 851 involving the sale, but not spin-off, of a public utility generating facility, for transactions initiated prior to December 31, 2001, and approved by the commission by December 31, 2002, that the selling utility

contract with the purchaser of the facility for the selling utility, an affiliate, or a successor corporation to operate and maintain the facility for at least two years. The commission may require these conditions to be met for transactions initiated on or after January 1, 2002. The commission shall require the contracts to be reasonable for both the seller and the buyer. (Emphasis added.)

(b) Subdivision (a) shall apply only if the facility is actually operated during the two-year period following the sale. Subdivision (a) shall not require the purchaser to operate a facility, nor shall it preclude a purchaser from temporarily closing the facility to make capital improvements.

ORA and the League insist that the Commission has no choice but to apply § 363 to this transaction. We disagree. We see no mandate that § 363 apply to this transaction. Rather, § 363 is limited to circumstances of "the continued safe and reliable operation of public utility electric generating facilities." (Emphasis added.) With respect to the Project, there is no "continued operation." The Project itself has been inoperable since January 1997, and PG&E has not operated the Project for electric generation in over six years. The only operations at the plant in the last six years were accomplished by the personnel of a non-utility, EID, for a brief, six-month period in the last half of 1996. Further, PG&E has applied to surrender its Project 184 license with no intention of engaging in power generation at that site again. EID's primary motivation in purchasing the project is to restore water deliveries, not power.

There is no purpose to be served in returning PG&E employees to be trained on and operate and maintain a repaired plant with which they have not been associated and have had no familiarity for over six years. Rather, only those most recently familiar with the operation and maintenance of the facility are needed – the employees of EID.

X. Motions

The final day of hearing in this matter was February 18, 1999; the matter was submitted upon receipt of briefs. Reply briefs were filed April 21, 1999, at which time the League submitted with its brief the declaration of a potential witness to refute statements of a witness for applicants. Applicants move to strike. The motion is granted, because the declaration is not timely.

On May 31, 1999, the League filed a motion to stay further proceedings pending hearings of the legislature on legislation that would affect the valuation of PG&E's hydroelectric generation facilities. Applicants oppose. The League's motion to stay provides no information as to the status of the three bills pending before the legislature or the date of any pending hearings. The bills apparently would apply to facilities owned by a utility as of January 1, 2000. This application should be decided before that date. Further, it would be inappropriate to stay these proceedings at this time, as a stay would be based upon mere speculation that these bills may be enacted and applied retroactively to this proceeding. The motion to stay is denied.

Finally, we take this opportunity to close A.97-11-012, since all outstanding issues in that proceeding have been resolved in this decision.

In Resolution ALJ 176-2991 dated April 23, 1998, the Commission preliminary categorized this application as ratesetting, and preliminarily determined that hearings were necessary.

XI. Comments to the Proposed Decision and Alternate Pages (as revised)

We have received comments from the parties, who merely reiterated the arguments made in their briefs. ORA's comments have, however, alerted us that we failed to discuss the benefits of the CATA to PG&E's shareholders. We have added a section on that issue. We will not make other changes to the decision

except to correct typographical errors and to provide for the chief executive officer of PG&E to commit to the decision. As PG&E states "PG&E's Chief Executive Officer can certainly bind PG&E to comply with the Commission's ultimate decision and order." (PG&E, Comments, August 9, 1999, p. 4.)

Findings of Fact

1. In the summer of 1994, PG&E began to actively seek a buyer for the El Dorado Project (FERC Project 184). At the time, the Project was inoperable due to the March 1993 turbine nozzle body failure. Thus, in 1994, the Project was not generating hydroelectric power, although water deliveries were able to continue.
2. On September 1, 1995, EID and PG&E reached agreement on the sale of the Project to EID (1995 Asset Sale Agreement (ASA)). Although the overall purchase price for the Project under the 1995 ASA was \$2 million, this purchase price did not represent the entirety of the 1995 ASA agreement.
3. On June 7, 1996, the ASA was amended and additional agreements were signed. The ASA terms show that the sale could not have been finalized without those additional agreements, and the closing of the 1995 sale was expressly conditioned on the negotiation and execution of those agreements. Each party could terminate the ASA at any time prior to the closing; an event that was not to take place until after Commission approval of a Section 851 application.
4. Under a reasonable time frame, the Commission could not have approved the ASA agreement prior to January 1, 1997.
5. On January 1, 1997, a devastating storm induced flooding that destroyed the El Dorado Diversion Dam, inundated the powerhouse, caused extensive damage to canal facilities, and accelerated slope instability and erosion along many miles of the upper canal. As a result of the damage the Project has not generated electricity since that time. Water deliveries to EID have been limited

to intermitted water sources downstream of the damaged area of the canal and those delivered by means of an emergency, temporary restoration of water supply.

6. Restoration of the gravity-flow water delivery system, using EID's preferred alternative of a tunnel bypass of the most landslide-prone area, without restoring power generation, would cost between \$14 million and \$20 million. Restoration of power generation capability would raise the estimate to between \$16 and \$21 million. The total expected after-tax net present value of the cost to restore, operate and maintain the Project over the next thirty years is \$49.9 million. The expected after-tax net present value of generation from the plant is \$21.1 million, resulting in an expected negative overall value of minus \$28.8 million for the plant over the next 30 years, restored and operated as a water delivery and hydroelectric generation facility. Restoring the water delivery facilities only and decommissioning the power generation facilities would result in a negative after-tax net present value of \$31.8 million.

7. PG&E terminated the ASA in June 1997.

8. On July 9, 1997, PG&E advised FERC that it was withdrawing its February 20, 1997 Notice of Intent (NOI) to file an application to relicense the El Dorado Project. PG&E advised FERC that full Project restoration for hydroelectric generation was not a viable alternative and that PG&E intended to prepare a license surrender application.

9. In November 1997, PG&E filed A.97-11-012 seeking a rate increase for water delivered to EID. Approval of PG&E's application would have resulted in an increase for the price for water delivered to EID from the present amount of \$3.50 per acre-foot to approximately \$325 per acre-foot.

10. EID sought dismissal of A.97-11-012 on the ground that under the 1919 Contract, PG&E's obligation to supply 15,080 acre-feet of water at \$3.50 per acre-foot was a fixed and permanent obligation.

11. In April 1998, PG&E and EID entered into the CATA. The CATA requires EID to pay PG&E \$1 for the inoperable Project. Subject to Commission approval of PG&E's proposed ratemaking treatment for the sale, PG&E would pay EID \$17 million as a contribution in recognition of the "as-is" condition of the Project.

12. In this application, PG&E seeks recovery of \$17 million from its ratepayers based on estimates of the costs that PG&E's electric ratepayers might otherwise bear in the absence of the CATA.

13. The sale pursuant to the CATA will achieve such public interest benefits as relieving PG&E of an obligation to provide consumptive water service, which is not a core business for PG&E, and, in turn, transferring that obligation and the Project to local control. Further, transfer to EID represents the best opportunity, in the face of PG&E's license surrender, for returning Project 184, a renewable electric generation unit, to operational status to the benefit of all California electric customers.

14. In April 1998, PG&E applied for transfer of the Project 184 license to EID. FERC, on April 2, 1999, issued its "Order Approving Transfer of License" (87 FERC ¶ 61.022) wherein it found "[EID] is qualified to hold the license and to operate the property under the license, and it has agreed to accept all the terms and conditions of the license and to be bound by the license as if it were the original licensee."

15. Unless the transfer of facilities is approved by this Commission, the power facilities will be decommissioned by PG&E (at considerable cost to PG&E's ratepayers) and California will lose 21 MW of renewable power.

16. In estimating the potential cost of decommissioning, we will adopt PG&E's \$11.7 million estimate (which assumes that PG&E would provide water by constructing its Riverton System and would decommission its power facilities).

17. Should we approve the transfer without adequate funding, PG&E and its ratepayers would remain liable for decommissioning costs. Absent adequate compensation by PG&E transfer of the Project could cause more problems, expenses, and lawsuits than outright denial of the transfer.

18. EID has been paying approximately \$3.50/acre foot since 1919 – over 80 years. It is not unreasonable to believe that EID would prevail on the 1919 Contract. On the other hand, should PG&E win the water rate case there would still be the sunk costs of the power production facilities to be recovered from electric ratepayers.

19. A PG&E buy-out of its water supply obligation to EID, to avoid further litigation and public utility duties associated with that obligation, could cost in the range of \$40 million to \$47 million, a cost that would likely be recovered as a generation-related obligation in the TCBA. Coupled with decommissioning costs estimated at \$11.7 million and similarly recovered through the TCBA, electric ratepayer cost exposure, in the absence of the CATA, could be close to \$60 million.

20. If the sale is approved, PG&E's electric ratepayers will be relieved of their obligation to pay for decommissioning, will receive the full benefit of PG&E's insurance recovery following the 1997 New Year's storm and flood, and will be relieved of any long-term obligation resulting from PG&E's water delivery obligation to EID. The value of these benefits to electric ratepayers match the \$17 million that ratepayers are asked to contribute as part of the sale of the Project to EID.

21. We will not place a speculative value on the land to be transferred. The land is currently under federal and state restrictions. It is needed to provide water and power. A valuation that requires speculation upon events or combinations of occurrences which are not shown to be reasonably probable will not be considered. PG&E's estimate of \$100,000 is reasonable.

22. Although \$17 million is not an unreasonable amount to be paid to induce EID to take the Project, we authorize \$15 million as a charge against ratepayers. This results from three causes: (1) the fact that the negotiated \$17 million was not arms-length, (2) the unusual nature of the CATA and (3) the benefit to EID.

23. The value of the transfer to EID is evident. It controls its own water supply; it becomes eligible to receive 17,000 acre/feet of additional water rights; it avoids possibility of paying PG&E \$325/acre-foot for water; and it has the opportunity to provide hydroelectric power. EID substantially benefits from this transfer.

24. \$2 million is a reasonable quantification of the benefit to EID.

25. Should PG&E prevail in its water rate case the cost of water to EID would increase from approximately \$53,000 per year to over \$4,900,000 per year.

26. The value of the right to receive 15,080 acre-feet of water from PG&E has no value to EID as these rights are dedicated to EID. EID's rights to this water do not change as a result of this transfer. Whatever the value is to EID, it is the same before the transfer as after the transfer.

27. Approving the transfer with a payment to EID of \$15 million is reasonable and does not significantly reduce the economic benefit of the Project to EID.

28. The sale of the El Dorado Project to EID pursuant to the terms and conditions of the CATA as modified by this decision is reasonable, in the public interest, and consistent with applicable law and policy.

29. Section 363 is limited to circumstances of "the continued safe and reliable operation of public utility electric generating facilities." The Project itself has been inoperable since January 1997, and PG&E itself has not operated the Project for electric generation in over six years.

30. On July 12, 1999, the Board of Directors of the El Dorado Irrigation District adopted Resolution 99-60 certifying the Final EIR for the Acquisition, Permanent Repair, and Operation of the El Dorado Hydroelectric Project (Project No. 184) and Acquisition of 17,000 acre-feet per year of New Consumptive Water (SCH #98082005); making Findings of Fact documenting compliance with CEQA and their independent review and consideration of the information in the EIR prior to talking action on the project; adopting the Mitigation Monitoring Plan implementing all adopted mitigation measures; and issuing a Statement of Overriding Considerations.

31. On July 12, 1999, the Board of Directors of the El Dorado Irrigation District adopted Resolution 99-61 approving the Acquisition, Permanent Repair, and Operation of the El Dorado Hydroelectric Project (Project No. 184) subject to conditions identified therein.

32. On July 12, 1999, the Board of Directors of the El Dorado Irrigation District adopted Resolution 99-60 approving the Acquisition of 17,000 acre-feet per year of New Consumptive Water subject to conditions identified therein.

33. On July 12, 1999, the Board of Directors of the El Dorado Irrigation District adopted Resolution 99-60, including Exhibit A, wherein the Board made an overall finding with respect to alternatives to the project and found that none of the project alternatives avoids or reduces to insignificance the impacts of the proposed project and also feasibly achieves the project objectives. The Board consequently selected the proposed project, as mitigated and conditioned by the Board.

34. The Final Environmental Impact Report identified significant environmental impacts.

35. A statement of overriding conditions has been prepared as Appendix C.

36. The FEIR has been independently reviewed by the Commission and is deemed sufficient for our purposes as a responsible agency in accordance with CEQA.

Conclusions of Law

1. As part of this sale, EID assumes responsibility for decommissioning of the Project, and PG&E will not ask ratepayers for any decommissioning costs.

2. The rulings of the Assigned Commissioner and Presiding ALJ which held that this Commission should not address water rights and the impact of PG&E's proposed transfer on public trust resources including fish and wildlife, and related recreational uses, of the South Fork of the American River and its tributary lakes are affirmed.

3. Under § 851, the sale of the El Dorado Project to EID, pursuant to the terms and conditions of the CATA, as modified by this decision, is reasonable, in the public interest, and consistent with applicable law and policy.

4. Pub. Util. Code § 363 does not apply to this transfer.

5. The League's motion to stay is denied.

6. The Final Environmental Impact Report was prepared, processed and completed by the Local Agency in compliance with CEQA.

7. The findings and statement of overriding considerations set forth in Appendix B and C, respectively, reflect the independent judgement of the Commission and should be adopted.

8. This proceeding should be closed.

9. A.97-11-012 should be closed.

O R D E R

IT IS ORDERED that:

1. Pacific Gas and Electric Company (PG&E) is authorized to sell to the El Dorado Irrigation District (EID) the El Dorado Hydroelectric Project (Project) located in El Dorado, Alpine, and Amador Counties, pursuant to the terms of the Conditional Asset Transfer Agreement (CATA) of April 1998, as modified by this decision.
2. The "CPUC Approved Amount" (as that term is used in the CATA) is \$15,000,000, which may be recovered from ratepayers through the Transition Cost Balancing Account and netted against the benefits of economic plants.
3. PG&E is relieved of its public utility obligation to provide consumptive water to EID.
4. PG&E shall serve on the Commission's Energy Division a certified copy of a commitment by its chief executive officer acknowledging all of the terms and conditions of this order, and specifically referencing that PG&E will not, in any forum, ask ratepayers for decommissioning costs associated with the Project and assets being transferred.
5. The findings and statement of overriding consideration set forth in Appendix B and C, respectively, are adopted.
6. This authorization will expire if not exercised by December 31, 1999.
7. This proceeding is closed.

8. Application 97-11-012 is closed.

This order is effective today.

Dated September 16, 1999, at San Francisco, California.

RICHARD A. BILAS
President
HENRY M. DUQUE
JOSIAH L. NEEPER
JOEL Z. HYATT
CARL W. WOOD
Commissioners

I will file a concurrence.

/s/ HENRY M. DUQUE
Commissioner

A.98-04-016
D.99-09-066

Henry M. Duque, Commissioner, concurring:

At issue is whether we should allow PG&E to transfer the El Dorado Hydroelectric Project to EID. As proposed by PG&E, EID will pay PG&E \$1.00 for the facility and PG&E will pay EID \$17 million to take the asset off its hands. The generation asset is not currently operating, water delivery is being performed over temporary facilities, and there are numerous lawsuits over the rights and obligations of the parties affected. This order finds that a payment to EID of \$17 million is within the range of reasonable benefits that will accrue to electric ratepayers from the proposed transfer. However, this order reduces the payment by \$2 million to account for the benefits to EID and PG&E shareholders as a result of this transfer. I sponsored alternate pages that would have approved the full \$17 million payment to EID. In all other respects, my alternate was the same as adopted decision.

I prepared this alternate because I was convinced that \$17 million is well within the reasonable estimate of benefits the electric ratepayers will receive from this transfer. They are relieved of decommissioning responsibility, environmental restoration responsibility, water delivery obligations, and numerous other costly activities. In addition, although ORA argued that the electric ratepayers would not bear most of these costs of restoring the project and delivering water to EID, I think that their position simply ignores the long-standing reality of this facility. It has historically been treated as an electric asset. The revenues associated with water service were treated as electric operating revenues. It is clear to me that electric ratepayers would bear some responsibility for these costs and obligations and therefore, I believe that these costs should be factored into the assessment of benefits that accrue to ratepayers under this transfer. When reviewed in that light, a \$17 million payment is clearly reasonable.

Approving this transfer also allows a local agency to secure and restore its water supply. Grappling with the costs to rebuild aging infrastructure is going to high on water delivery organizations priorities lists for a long time to come. This transfer allows EID to move forward to address this difficult problem for a large part of its water supply. I think that the resolution of the issues that the transfer agreement represents is a productive step by PG&E and EID to solve really contentious issues that are of crucial local import.

/s/ HENRY M. DUQUE

Henry M. Duque
Commissioner

September 16, 1999

San Francisco

Last updated on 22-JAN-1999 by: CPL
A9804016 LIST

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(END OF APPENDIX A)

APPENDIX B

Findings of Fact for Acquisition, Permanent Repair, and Operation of the El Dorado Hydroelectric Project and Acquisition of 17,000 Acre-Feet per Year of New Consumptive Water: EIR Impacts and Mitigation Measures

Environmental Impacts	Level of Significance	Adopted Mitigation Measures	Findings of Fact ⁽¹⁾
Impacts due to the Implementation of the Permanent Repairs (Chapter 6 of the Final EIR)²			
Biological Resources			
Aquatic Biological Resources			
Canal Repairs			
6.3-1 Dewatering of the canal could lead to fish mortality.	Significant	While dewatering the canal, EID or designated contractor would implement the following: 6.3-1a The canal fish rescue protocol developed with the Department of Fish and Game for avoiding impacts to fish resulting from dewatering.	The EID Board of Directors directed that the stated mitigation measure(s) be incorporated into the project as a required condition of approval. The Commission finds, based on substantial evidence in the record, that this measure is appropriate and feasible, and will lessen to a less-than-significant (acceptable) level, or avoid, the impact.
Diversion Dam Reconstruction			
6.3-2 Sediments could enter the South Fork due to construction activities on the banks of the river.	Significant	During and following construction EID or designated contractor will do the following: 6.3-2a The construction would be undertaken during low flow conditions. This increases the contractor's ability to bypass the South Fork waters around the construction site when ground disturbing activities are being	The EID Board of Directors directed that the stated mitigation measure(s) be incorporated into the project as a required condition of approval. The Commission finds, based on substantial evidence in the record, that this measure is appropriate and feasible, and will lessen to a less-than-significant (acceptable) level, or avoid, the impact.

² "Impact No. on Exhibit A" refers to Chapter/ Section of the Final Environmental Impact Report for the Acquisition, Permanent Repair and Operation of the El Dorado Hydroelectric Project and Acquisition of 17,000 afy of New Consumptive Water, prepared for EID dated July, 1999.

Findings of Fact for Acquisition, Permanent Repair, and Operation of the El Dorado Hydroelectric Project and Acquisition of 17,000 Acre-Feet per Year of New Consumptive Water: EIR Impacts and Mitigation Measures

Environmental Impacts	Level of Significance	Adopted Mitigation Measures	Findings of Fact ⁽¹⁾
		undertaken.	
		<p>6.3-2b The excavation would be carried out in the dry, following the installation of a temporary coffer dam immediately upstream of the existing, damaged diversion structure.</p> <p>6.3-2c A silt curtain would be put into place during the installation of the temporary coffer dam, to contain fine sediments that might be kicked up into suspension by the installation procedures.</p> <p>6.2-2d Washed rock would be used in the reconstruction to assure the construction does not introduce substantial fine sediments into the South Fork channel.</p> <p>6.3-2e The disturbed portions of the South Fork channel bottom would be mantled with coarse rock to assure that a minimum of fine sediment becomes entrained when the coffer dam is removed.</p>	
		<p>6.3-2f Fine sediments deposited behind the coffer dam during the construction period shall be removed from the channel before the coffer dam is taken out, thus preventing a sediment slug from being released.</p>	

Findings of Fact for Acquisition, Permanent Repair, and Operation of the El Dorado Hydroelectric Project and Acquisition of 17,000 Acre-Feet per Year of New Consumptive Water: EIR Impacts and Mitigation Measures

Environmental Impacts	Level of Significance	Adopted Mitigation Measures	Findings of Fact ⁽¹⁾
		<p>6.3-2g Install silt fences or straw bales above the high water mark of the river during construction to prevent sediment from reaching the South Fork.</p> <p>6.3-2h Regrade the site to its preproject drainage and contours.</p> <p>6.3-2i Seed areas of bare ground with native erosion control mix.</p> <p>6.3-2j Monitor water quality in runoff discharged from the base of the tunnel muck pile to assure compliance with the Basin Plan.</p>	
<p><i>Tunnel Construction</i></p> <p>6.3-8 Indirect loss of riparian vegetation.. Activities at the Bull Creek portal would occur in close proximity to the streambed and could result in the loss of riparian vegetation.</p>	Significant	<p>Prior to construction EID or designated contractor will implement the following measures to protect riparian resources at Bull Creek.</p> <p>6.3-8a A temporary fence will be placed along the stream to restrict construction activities outside the stream corridor.</p> <p>6.3-8b Construction crew training would be implemented on the importance of avoiding riparian habitat. Following construction, the fence would be removed.</p>	The EID Board of Directors directed that the stated mitigation measure(s) be incorporated into the project as a required condition of approval. The Commission finds, based on substantial evidence in the record, that this measure is appropriate and feasible, and will lessen to a less-than-significant (acceptable) level, or avoid, the impact.
<i>Wildlife Resources</i>			
<i>Diversion Dam Reconstruction</i>			

Findings of Fact for Acquisition, Permanent Repair, and Operation of the El Dorado Hydroelectric Project and Acquisition of 17,000 Acre-Feet per Year of New Consumptive Water: EIR Impacts and Mitigation Measures

Environmental Impacts	Level of Significance	Adopted Mitigation Measures	Findings of Fact ⁽¹⁾
6.3-13 <i>Foothill yellow-legged frog.</i> Construction activities have the potential to introduce sediment into the South Fork.	Significant	<p>During and following construction EID or designated contractor will do the following:</p> <p>6.3-13a The construction would be undertaken during low flow conditions. This increases the contractor's ability to bypass the South Fork waters around the construction site when ground disturbing activities are being undertaken.</p> <p>6.3-13b The excavation would be carried out in the dry, following the installation of a temporary coffer dam immediately upstream of the existing, damaged diversion structure.</p> <p>6.3-13c A silt curtain would be put into place during the installation of the temporary coffer dam, to contain fine sediments that might be kicked up into suspension by the installation procedures.</p> <p>6.3-13d Washed rock would be used in the reconstruction to assure the construction does not introduce substantial fine sediments into the South Fork channel.</p> <p>6.3-13e The disturbed portions of the</p>	The EID Board of Directors directed that the stated mitigation measure(s) be incorporated into the project as a required condition of approval. The Commission finds, based on substantial evidence in the record, that this measure is appropriate and feasible, and will lessen to a less-than-significant (acceptable) level, or avoid, the impact.

Findings of Fact for Acquisition, Permanent Repair, and Operation of the El Dorado Hydroelectric Project and Acquisition of 17,000 Acre-Feet per Year of New Consumptive Water: EIR Impacts and Mitigation Measures

Environmental Impacts	Level of Significance	Adopted Mitigation Measures	Findings of Fact ⁽¹⁾
		<p>South Fork channel bottom would be mantled with coarse rock to assure that a minimum of fine sediment becomes entrained when the coffer dam is removed.</p> <p>6.3-13f Fine sediments deposited behind the coffer dam during the construction period shall be removed from the channel before the coffer dam is taken out, thus preventing a sediment slug from being released.</p> <p>6.3-13g Install silt fences or straw bales.</p> <p>6.3-13h Regrade the site to its preproject drainage and contours.</p> <p>6.3-13i Seed areas of bare ground with native erosion control mix.</p> <p>6.3-13j Monitor water quality in runoff discharged from the base of the tunnel muck pile to assure compliance with the Basin Plan.</p>	
<p>Powerhouse Repairs</p> <p>6.3-14 <i>Disturbance of Bats.</i> Repairs at the powerhouse may disturb populations of special status bat species.</p>	Significant	<p>Prior to construction, EID or designated contractor would implement the following measures:</p> <p>6.3-14a Install bat boxes within the vicinity of the powerhouse.</p> <p>6.3-14b Exclude bats from the powerhouse by blocking all</p>	<p>The EID Board of Directors directed that the stated mitigation measure(s) be incorporated into the project as a required condition of approval. The Commission finds, based on substantial evidence in the record, that this measure is appropriate and feasible, and will lessen to a less-than-significant (acceptable)</p>

Findings of Fact for Acquisition, Permanent Repair, and Operation of the El Dorado Hydroelectric Project and Acquisition of 17,000 Acre-Feet per Year of New Consumptive Water: EIR Impacts and Mitigation Measures

Environmental Impacts	Level of Significance	Adopted Mitigation Measures	Findings of Fact ⁽¹⁾
		entrances to the facility.	level, or avoid, the impact.
6.3-15 <i>Foothill yellow-legged frog.</i> Construction activities have the potential to introduce sediment into the South Fork at the powerhouse.	Significant	<p>Following construction, EID or designated contractor will implement the following measures to reduce sediment into the South Fork:</p> <p>6.3-15a Silt fences and straw bales will be placed above the high water mark of the river.</p> <p>6.3-15b Areas of disturbance will be stabilized.</p> <p>6.3-15c Areas of bare soil will be seeded with native species for erosion control.</p>	The EID Board of Directors directed that the stated mitigation measure(s) be incorporated into the project as a required condition of approval. The Commission finds, based on substantial evidence in the record, that this measure is appropriate and feasible, and will lessen to a less-than-significant (acceptable) level, or avoid, the impact.
<p><i>Tunnel Construction</i></p> <p>6.3-16 <i>Foothill yellow-legged frog.</i> Uncontrolled erosion and sedimentation from construction activities could adversely affect habitat for the yellow legged frog in Bull Creek, Mill Creek, and the South Fork.</p>	Significant	<p>Following construction, EID or designated contractor will implement the following measures to reduce sediment into the South Fork:</p> <p>6.3-16a Silt fences and straw bales will be placed above the high water marks of the South Fork, Bull Creek and Mill Creek.</p> <p>6.3-16b Areas of disturbance will be stabilized.</p> <p>6.3-16c Areas of bare soil will be seeded with native species for erosion control.</p>	The EID Board of Directors directed that the stated mitigation measure(s) be incorporated into the project as a required condition of approval. The Commission finds, based on substantial evidence in the record, that this measure is appropriate and feasible, and will lessen to a less-than-significant (acceptable) level, or avoid, the impact.

Findings of Fact for Acquisition, Permanent Repair, and Operation of the El Dorado Hydroelectric Project and Acquisition of 17,000 Acre-Feet per Year of New Consumptive Water: EIR Impacts and Mitigation Measures

Environmental Impacts	Level of Significance	Adopted Mitigation Measures	Findings of Fact ⁽¹⁾
<p>6.3-19 <i>Special Status Bat Species.</i> Tunnel construction could result in disturbing roost sites for pallid bat and several <i>Myotis</i> bat species, which may result in the abandonment of the roost site.</p>	Significant	<p>Prior to construction, EID or designated contractor would implement the following measure to avoid bat mortality:</p> <p>6.3-19a Based on surveys of potential habitat, bat houses would be installed prior to construction to provide alternative roost sites for special status bat populations displaced by the tunnel construction activities.</p>	<p>The EID Board of Directors directed that the stated mitigation measure(s) be incorporated into the project as a required condition of approval. The Commission finds, based on substantial evidence in the record, that this measure is appropriate and feasible, and will lessen to a less-than-significant (acceptable) level, or avoid, the impact.</p>
Cultural Resources			
<p><i>Prehistoric Sites</i></p> <p>6.4-1 Project construction activities could result in the inadvertent disturbance of known and unknown prehistoric sites in the project vicinity.</p>	Significant	<p>Prior to and during construction activities at the canal, tunnel, and dam, EID or designated contractor will implement the following mitigation measures:</p> <p>6.4-1a Prehistoric archaeological site 05-03-56-707 shall be flagged prior to construction.</p> <p>6.4-1b The training program shall involve educating the construction workers regarding the known and potential cultural resources sensitivities connected to the project. It shall advise the construction personnel about avoidance measures and sensitive areas located within the APE and</p>	<p>The EID Board of Directors directed that the stated mitigation measure(s) be incorporated into the project as a required condition of approval. The Commission finds, based on substantial evidence in the record, that this measure is appropriate and feasible, and will lessen to a less-than-significant (acceptable) level, or avoid, the impact.</p>

Findings of Fact for Acquisition, Permanent Repair, and Operation of the El Dorado Hydroelectric Project and Acquisition of 17,000 Acre-Feet per Year of New Consumptive Water: EIR Impacts and Mitigation Measures

Environmental Impacts	Level of Significance	Adopted Mitigation Measures	Findings of Fact ⁽¹⁾
		<p>in the vicinity of the project.</p> <p>6.4-1c An archaeologist shall be contacted if any previously unknown archaeological sites are discovered during construction or if any known sites are damaged during the course of the project. Necessary discovery measures are listed in Section 6.4.3.2 of this report.</p>	
<p><i>Historic Sites</i></p> <p>6.4-2 Project construction activities could result in the inadvertent disturbance of known and unknown historic sites in the project vicinity.</p>	Significant	<p>Prior to and during construction, EID or designated contractor will implement the following measures:</p> <p>6.4-2a Due to the proximity of the proposed project to a number of historic sites in the area, access shall be restricted to pre-existing roads and no equipment or materials storage or staging areas shall be situated outside of the APE.</p>	The EID Board of Directors directed that the stated mitigation measure(s) be incorporated into the project as a required condition of approval. The Commission finds, based on substantial evidence in the record, that this measure is appropriate and feasible, and will lessen to a less-than-significant (acceptable) level, or avoid, the impact.
		<p>6.4-2b A training program shall be implemented wherein construction personnel shall be made aware of the sensitive nature of the rock walls and certain historic sites. Construction personnel shall be instructed to avoid these</p>	

Findings of Fact for Acquisition, Permanent Repair, and Operation of the El Dorado Hydroelectric Project and Acquisition of 17,000 Acre-Feet per Year of New Consumptive Water: EIR Impacts and Mitigation Measures

Environmental Impacts	Level of Significance	Adopted Mitigation Measures	Findings of Fact ⁽¹⁾
		<p>sensitive areas.</p> <p>6.4-2c Two historic sites are located in close proximity to the construction activities. These sites shall be flagged and avoided to ensure their protection.</p> <p>6.4-2d No motorized equipment or heavy machinery shall be allowed to work or travel within two feet of the face of the eligible rock walls at Flume 24/25 or near the rock wall located in Alder Creek Canyon. Any necessary work immediately adjacent to the rock walls shall be performed by hand.</p> <p>6.4-2e In the event that a known cultural resource is inadvertently damaged during construction or if a previously unknown historic resource is discovered during construction, all work shall stop until the damage can be assessed. The SHPO, the ENF Archaeologist, Denise McClemore and Placerville Ranger District Archaeologist Judy Rood shall be contacted immediately.</p> <p>6.4-2f An archaeologist shall perform an</p>	

Findings of Fact for Acquisition, Permanent Repair, and Operation of the El Dorado Hydroelectric Project and Acquisition of 17,000 Acre-Feet per Year of New Consumptive Water: EIR Impacts and Mitigation Measures

Environmental Impacts	Level of Significance	Adopted Mitigation Measures	Findings of Fact ⁽¹⁾
		inspection of the rock wall at Flume 24/25 when work is in progress at these locations to prevent inadvertent damage to the historic rock wall.	
<p><i>Ethnographic Sites</i></p> <p>6.4-3 There are no known ethnographic resources located in close vicinity to the proposed project and it is highly unlikely the project would affect any ethnographic sites. However, inadvertent damage to any unknown burials or other previously unknown ethnographic resources would be considered a significant impact.</p>	Potentially Significant	<p>Prior to and during construction EID or designate contractor will implement the following measures:</p> <p>6.4-3a Due to the remote possibility that buried resources may be present, one element of the training program shall advise construction personnel as to the nature of archaeological resources (both historic and prehistoric) and instruct them regarding appropriate measures to take in the event of discovery (per federal regulations in CFR 800.11).</p>	The EID Board of Directors directed that the stated mitigation measure(s) be incorporated into the project as a required condition of approval. The Commission finds, based on substantial evidence in the record, that this measure is appropriate and feasible, and will lessen to a less-than-significant (acceptable) level, or avoid, the impact
<p><i>Geology and Soils</i></p> <p><i>Diversion Dam Reconstruction</i></p> <p>6.6-2 Although the area of disturbance is limited, ground disturbing activities could cause changes in siltation, deposition, or erosion.</p>	Significant	<p>During and following construction EID or designated contractor will do the following:</p> <p>6.6-2a The construction would be undertaken during low flow</p>	The EID Board of Directors directed that the stated mitigation measure(s) be incorporated into the project as a required condition of approval. The Commission finds, based on substantial evidence in the record, that this

Findings of Fact for Acquisition, Permanent Repair, and Operation of the El Dorado Hydroelectric Project and Acquisition of 17,000 Acre-Feet per Year of New Consumptive Water: EIR Impacts and Mitigation Measures

Environmental Impacts	Level of Significance	Adopted Mitigation Measures	Findings of Fact ⁽¹⁾
		<p>conditions. This increases the contractor's ability to bypass the South Fork waters around the construction site when ground disturbing activities are being undertaken.</p> <p>6.6-2b The excavation would be carried out in the dry, following the installation of a temporary coffer dam immediately upstream of the existing, damaged diversion structure.</p> <p>6.6-2c A silt curtain would be put into place during the installation of the temporary coffer dam, to contain fine sediments that might be kicked up into suspension by the installation procedures.</p> <p>6.6-2d Washed rock would be used in the reconstruction to assure the construction does not introduce substantial fine sediments into the South Fork channel.</p> <p>6.6-2e The disturbed portions of the South Fork channel bottom would be mantled with coarse rock to assure that a minimum of fine sediment becomes entrained when the coffer dam is removed.</p> <p>6.6-2f Fine sediments deposited behind</p>	<p>measure is appropriate and feasible, and will lessen to a less-than-significant (acceptable) level, or avoid, the impact.</p>

Findings of Fact for Acquisition, Permanent Repair, and Operation of the El Dorado Hydroelectric Project and Acquisition of 17,000 Acre-Feet per Year of New Consumptive Water: EIR Impacts and Mitigation Measures

Environmental Impacts	Level of Significance	Adopted Mitigation Measures	Findings of Fact ⁽¹⁾
		<p>the coffer dam during the construction period shall be removed from the channel before the coffer dam is taken out, thus preventing a sediment slug from being released.</p> <p>6.6-2g Install silt fences or straw bales above the high water mark of the river during construction to prevent sediment from reaching the South Fork.</p> <p>6.6-2h Regrade the site to its preproject drainage and contours.</p> <p>6.6-2i Seed areas of bare ground with native erosion control mix.</p> <p>6.6-2j The stabilization and reseeding will be implemented throughout the construction period, including the wet season, and monitored periodically for two years to assure the measures are effective.</p>	
Hazards			
<p>Risk of Upset</p> <p>6.7-4 The permanent repair components of the proposed project will utilize heavy equipment and helicopters, which present a risk of accidental release of hazardous substances such as oil, fuel,</p>	Significant	<p>During construction, EID or designated contractors will implement the following measures:</p> <p>6.7-4a All vehicles will carry spill kits (Acme barrels).</p>	<p>The EID Board of Directors directed that the stated mitigation measure(s) be incorporated into the project as a required condition of approval. The Commission finds, based on substantial evidence in the record, that this</p>

Findings of Fact for Acquisition, Permanent Repair, and Operation of the El Dorado Hydroelectric Project and Acquisition of 17,000 Acre-Feet per Year of New Consumptive Water: EIR Impacts and Mitigation Measures

Environmental Impacts	Level of Significance	Adopted Mitigation Measures	Findings of Fact ^[1]
and hydraulic fluid.		6.7-4b All hazardous materials will be handles following the requirements of the Materialize Safety Data Sheets.	measure is appropriate and feasible, and will lessen to a less-than-significant (acceptable) level, or avoid, the impact.
<p><i>Increased Risk of Fire</i></p> <p>6.7-5 Construction activities in wildland areas could increase the risk of fire in the project vicinity.</p>	Significant	<p>Prior to construction, EID or the construction contractor will implement the following measures:</p> <p>6.7-5a Inspect equipment prior to use.</p> <p>6.7-5b Conduct fire awareness training prior to implementation construction activities.</p> <p>6.7-5c Require fire protection measures within all construction related contracts issued by EID for this project.</p>	The EID Board of Directors directed that the stated mitigation measure(s) be incorporated into the project as a required condition of approval. The Commission finds, based on substantial evidence in the record, that this measure is appropriate and feasible, and will lessen to a less-than-significant (acceptable) level, or avoid, the impact.
<p><i>Canal Repairs</i></p> <p>6.8-2 <i>Erosion and Sedimentation.</i> The removal of the existing pipes in the two sections of damaged canal, and the installation of the new concrete sections, will involve limited ground disturbing activities in and adjacent to the El Dorado Canal. This may result in some erosion and sedimentation.</p>	Significant	<p>Following construction, EID or designated contractor will implement the following measures:</p> <p>6.8-2a Silt fences and straw bales will be installed.</p> <p>6.8-2b Areas of disturbance will be stabilized.</p> <p>6.8-2c Areas of bare soil will be seeded with native erosion control mix.</p>	The EID Board of Directors directed that the stated mitigation measure(s) be incorporated into the project as a required condition of approval. The Commission finds, based on substantial evidence in the record, that this measure is appropriate and feasible, and will lessen to a less-than-significant (acceptable) level, or avoid, the impact.

Findings of Fact for Acquisition, Permanent Repair, and Operation of the El Dorado Hydroelectric Project and Acquisition of 17,000 Acre-Feet per Year of New Consumptive Water: EIR Impacts and Mitigation Measures

Environmental Impacts	Level of Significance	Adopted Mitigation Measures	Findings of Fact ⁽¹⁾
		<p>6.8-2d Mulching will occur as areas are exposed to prevent erosion during storm events.</p> <p>6.8-2e Seeding on National Forest lands will use a seed mix that meets ENF approval.</p>	
<p><i>Diversion Dam Reconstruction</i></p> <p>6.8-4 <i>Turbidity and Sedimentation.</i> Turbidity and sedimentation may occur in the South Fork due to construction activity at the diversion dam.</p>	Significant	<p>Following construction EID or designated contractor will do the following:</p> <p>6.8-4a The construction would be undertaken during low flow conditions. This increases the contractor's ability to bypass the South Fork waters around the construction site when ground disturbing activities are being undertaken.</p> <p>6.8-4b The excavation would be carried out in the dry, following the installation of a temporary coffer dam immediately upstream of the existing, damaged diversion structure.</p> <p>6.8-4c A silt curtain would be put into place during the installation of the temporary coffer dam, to contain fine sediments that might be kicked up into suspension by the installation procedures.</p> <p>6.8-4d Washed rock would be used in</p>	<p>The EID Board of Directors directed that the stated mitigation measure(s) be incorporated into the project as a required condition of approval. The Commission finds, based on substantial evidence in the record, that this measure is appropriate and feasible, and will lessen to a less-than-significant (acceptable) level, or avoid, the impact.</p>

Findings of Fact for Acquisition, Permanent Repair, and Operation of the El Dorado Hydroelectric Project and Acquisition of 17,000 Acre-Feet per Year of New Consumptive Water: EIR Impacts and Mitigation Measures

Environmental Impacts	Level of Significance	Adopted Mitigation Measures	Findings of Fact ⁽¹⁾
		<p>the reconstruction to assure the construction does not introduce substantial fine sediments into the South Fork channel.</p> <p>6.8-4e The disturbed portions of the South Fork channel bottom would be mantled with coarse rock to assure that a minimum of fine sediment becomes entrained when the coffer dam is removed.</p> <p>6.8-4f Fine sediments deposited behind the coffer dam during the construction period shall be removed from the channel before the coffer dam is taken out, thus preventing a sediment slug from being released.</p> <p>6.8-4g Install silt fences or straw bales above the high water mark of the river during construction to prevent sediment from reaching the South Fork.</p> <p>6.8-4h Regrade the site to its preproject drainage and contours.</p> <p>6.8-4i Seed areas of bare ground with native erosion control mix.</p> <p>6.8-4j Continuous monitoring of turbidity will be performed downstream of the diversion dam reconstruction during the construction of the coffer dam to</p>	

Findings of Fact for Acquisition, Permanent Repair, and Operation of the El Dorado Hydroelectric Project and Acquisition of 17,000 Acre-Feet per Year of New Consumptive Water: EIR Impacts and Mitigation Measures

Environmental Impacts	Level of Significance	Adopted Mitigation Measures	Findings of Fact ⁽¹⁾
		<p>assure the fiber fences are preventing the release of suspended sediments in amounts that exceed Basin Plan standards.</p> <p>6.8-4k Equipment entering the stream channel will be steam cleaned prior to entry to avoid contamination from oil, gas and hydraulic fluids.</p> <p>6.8-4l Mulching will occur as areas are exposed to prevent erosion during storm events.</p> <p>6.8-4m Seeding on National Forest lands will use a seed mix that meets ENF approval.</p>	
<p><i>Tunnel Construction</i></p> <p>6.8-5 <i>Process water.</i> The TBM process water will contain suspended sediments, and it has the potential to contain hydrocarbons from the TBM mineral oil cooling system from contact with the TBM lubricants. The proposed project includes processing facilities to remove sediment and hydrocarbons from the process water.</p>	Significant	<p>During TBM operations, EID or designated contractor will implement the following measures:</p> <p>6.8-5a Implement a water recycling program for process water.</p> <p>6.8-5b Perform onsite process water treatment.</p> <p>6.8-5c Perform visual inspection and verification of process water treatment.</p> <p>6.8-5d The amount of process water generated by the TBM will be monitored to assure the elevated basin is large enough to allow</p>	<p>The EID Board of Directors directed that the stated mitigation measure(s) be incorporated into the project as a required condition of approval. The Commission finds, based on substantial evidence in the record, that this measure is appropriate and feasible, and will lessen to a less-than-significant (acceptable) level, or avoid, the impact.</p>

Findings of Fact for Acquisition, Permanent Repair, and Operation of the El Dorado Hydroelectric Project and Acquisition of 17,000 Acre-Feet per Year of New Consumptive Water: EIR Impacts and Mitigation Measures

Environmental Impacts	Level of Significance	Adopted Mitigation Measures	Findings of Fact ⁽¹⁾
		sufficient settling. The elevated basin will be enlarged, as necessary to accommodate the process water. The basin will be designed to spill into the El Dorado Canal in the event the supply of process water temporarily exceeds the capacity of the basin.	
6.8-6 <i>Spoils runoff.</i> Runoff from the spoil pile is expected to meet Basin Plan objectives for pH and heavy minerals, however spoils pile runoff may contain some sediments.	Significant	<p>Following construction activities at the tunnel muck site, EID or designated contractor will implement the following:</p> <p>6.8-6a Silt fencing and straw bales will be installed and maintained at the spoils site,</p> <p>6.8-6b areas of disturbed soil will be stabilized with netting and revegetated,</p> <p>6.8-6c The grading plan will be implemented in keeping with CCR 3704.</p> <p>6.8-6d Monitor water quality in runoff discharged from the base of the tunnel muck pile to assure compliance with the Basin Plan. Treat the water, as necessary, prior to its release.</p>	The EID Board of Directors directed that the stated mitigation measure(s) be incorporated into the project as a required condition of approval. The Commission finds, based on substantial evidence in the record, that this measure is appropriate and feasible, and will lessen to a less-than-significant (acceptable) level, or avoid, the impact.
6.8-7 <i>Bull Creek.</i> The construction activities in the vicinity of the tunnel portal at Bull Creek has the potential to cause accelerated erosion and sedimentation	Significant	<p>Prior to and following construction EID or designated contractor will implement the following measures:</p> <p>6.8-7a Install silt fences and straw bales</p>	The EID Board of Directors directed that the stated mitigation measure(s) be incorporated into the project as a required condition of approval. The Commission finds, based on

Findings of Fact for Acquisition, Permanent Repair, and Operation of the El Dorado Hydroelectric Project and Acquisition of 17,000 Acre-Feet per Year of New Consumptive Water: EIR Impacts and Mitigation Measures

Environmental Impacts	Level of Significance	Adopted Mitigation Measures	Findings of Fact ⁽¹⁾
in the adjacent stream, which in turn may introduce additional sediments into the South Fork.		<p>between Bull Creek and the proposed land-disturbing construction activities</p> <p>6.8-7b Areas of disturbance will be returned to their pre-project contours and drainage.</p> <p>6.8-7c All areas of bare soil will be seeded with a native erosion control seed mix.</p>	substantial evidence in the record, that this measure is appropriate and feasible, and will lessen to a less-than-significant (acceptable) level, or avoid, the impact.
6.8-8 <i>Sad Bridge.</i> The placement of dirt fill and gravel on the Highway 50 approach to Sad Bridge has the potential to cause sedimentation in the South Fork.	Significant	<p>Prior to and following construction EID or designated contractor will implement the following measures:</p> <p>6.8-8a Install silt fences and straw bales between the South Fork and the proposed land-disturbing construction activities</p> <p>6.8-8b Areas of disturbance will be returned to their pre-project contours and drainage.</p> <p>6.8-8c All areas of bare soil will be seeded with a native erosion control seed mix.</p>	The EID Board of Directors directed that the stated mitigation measure(s) be incorporated into the project as a required condition of approval. The Commission finds, based on substantial evidence in the record, that this measure is appropriate and feasible, and will lessen to a less-than-significant (acceptable) level, or avoid, the impact.
6.8-9 <i>Canal Removal.</i> The land disturbing activities associated with restoring or stabilizing the abandoned section of the El Dorado Canal have the potential to cause accelerated erosion and sedimentation on the hill slopes immediately below the alignment of the canal.	Significant	<p>Following construction EID or designated contractor will implement the following measures:</p> <p>6.8-9a Install silt fences and straw bales along drainages.</p> <p>6.8-9b Areas of disturbance will be stabilized.</p> <p>6.8-9c All areas of bare soil will be</p>	The EID Board of Directors directed that the stated mitigation measure(s) be incorporated into the project as a required condition of approval. The Commission finds, based on substantial evidence in the record, that this measure is appropriate and feasible, and will lessen to a less-than-significant (acceptable) level, or avoid, the impact.

Findings of Fact for Acquisition, Permanent Repair, and Operation of the El Dorado Hydroelectric Project and Acquisition of 17,000 Acre-Feet per Year of New Consumptive Water: EIR Impacts and Mitigation Measures

Environmental Impacts	Level of Significance	Adopted Mitigation Measures	Findings of Fact ⁽¹⁾
		seeded with a native erosion control seed mix.	
Noise			
Increased Noise Levels			
6.10-1 Noise from construction-related traffic and helicopter use could affect nearby sensitive receptors.	Significant	<p>Prior to and during construction of the dam, canal, and tunnel, EIR or designated contractor will implement the following measures to reduce noise and noise related disturbances:</p> <p>6.10-1a During materials transport and construction activity periods, all vehicles shall be limited to speeds of 15 mph or less within the campground.</p> <p>6.10-1b During materials transport and construction activity periods, no vehicle shall idle with the engine running for more than 5 minutes.</p> <p>6.10-1c EID shall notify the homeowners' associations of each residence tract at least two weeks in advance of any materials transport and construction activities occurring within 0.5 mile of that recreation residence tract.</p> <p>6.10-1d EID shall post a notice to residents at each tract indicating the nature, timing, and duration</p>	The EID Board of Directors directed that the stated mitigation measure(s) be incorporated into the project as a required condition of approval. The Commission finds, based on substantial evidence in the record, that this measure is appropriate and feasible, and will lessen to a less-than-significant (acceptable) level, or avoid, the impact.

Findings of Fact for Acquisition, Permanent Repair, and Operation of the El Dorado Hydroelectric Project and Acquisition of 17,000 Acre-Feet per Year of New Consumptive Water: EIR Impacts and Mitigation Measures

Environmental Impacts	Level of Significance	Adopted Mitigation Measures	Findings of Fact ⁽¹⁾
		<p>of all materials transport and construction activities occurring within 0.5 mile of that recreation residence tract.</p> <p>6.10-1e EID shall post a notice to campground users indicating the nature, timing, and duration of all materials transport and construction activities occurring within 0.5 mile of the campground facility. This notice shall also indicate the names and locations of, and direct potential recreationists to, other campground facilities within a 10-mile radius of Sand Flat Campground.</p> <p>6.10-1f EID shall post a notice to picnic area users indicating the nature, timing, and duration of all materials transport and construction activities occurring within 0.5 mile of the picnic facility. This notice shall also indicate the names and locations of, and direct potential recreationists to, other picnic facilities within a 10-mile radius of the Indian Spring Picnic Area.</p>	
Recreation			
Permanent Repairs			

Findings of Fact for Acquisition, Permanent Repair, and Operation of the El Dorado Hydroelectric Project and Acquisition of 17,000 Acre-Feet per Year of New Consumptive Water: EIR Impacts and Mitigation Measures

Environmental Impacts	Level of Significance	Adopted Mitigation Measures	Findings of Fact ^[1]
<p><i>Developed Recreation Facilities and Opportunities</i></p> <p>6.12-3 <i>Sandflat Campground.</i> Trucks carrying equipment and supplies to the north bank of the dam repair site as well as the canal repair staging sites and staging areas may pass through Sand Flat Campground. Repair of the flumes is not scheduled to begin until mid-September, after the end of the peak recreation season. Never the less some recreation visitors may be present in Sand Flat Campground during the construction period. The noise and dust from transport vehicles could disrupt visitors.</p>	Significant	<p>Prior to and during repair of the canal and reconstruction of the diversion dam, EID and designated contractors shall implement the following measures:</p> <p>6.12-3a Speed limits of 15 mph or less will be maintained at through the campground</p> <p>6.12-3b EID shall post a notice of the proposed repair schedule at the campground.</p> <p>6.12-3c EID shall inform the campground host about the proposed construction.</p> <p>6.12-3d All construction equipment shall be equipped and maintained with noise reduction devices.</p>	The EID Board of Directors directed that the stated mitigation measure(s) be incorporated into the project as a required condition of approval. The Commission finds, based on substantial evidence in the record, that this measure is appropriate and feasible, and will lessen to a less-than-significant (acceptable) level, or avoid, the impact.
<p>6.12-5 <i>Summer Residence Tracts.</i> Project construction activities could disrupt residents at the 30 Milestone, Randall, White Hall, Alder Creek, and Bull Creek recreation residence tracts. Vehicles carrying construction crews and materials would pass through Alder Creek Tract, and construction activities, including helicopter operations, could disrupt residents in any of the nearby tracts. Mobilization or transport activities should not affect residents</p>	Significant	<p>Prior to construction of the tunnel and remediation of the canal, EID and designated contractors During materials transport and construction activity periods,</p> <p>6.12-5a All vehicles shall be limited to speeds of 15 mph or less on unpaved roads and on all roads through recreation residence tracts.</p> <p>6.12-5b Notify the residence of the summer home areas by sending</p>	The EID Board of Directors directed that the stated mitigation measure(s) be incorporated into the project as a required condition of approval. The Commission finds, based on substantial evidence in the record, that this measure is appropriate and feasible, and will lessen to a less-than-significant (acceptable) level, or avoid, the impact.

Findings of Fact for Acquisition, Permanent Repair, and Operation of the El Dorado Hydroelectric Project and Acquisition of 17,000 Acre-Feet per Year of New Consumptive Water: EIR Impacts and Mitigation Measures

Environmental Impacts	Level of Significance	Adopted Mitigation Measures	Findings of Fact ⁽¹⁾
that occupy cabins at the Whitehall and Randall tracts. However, residents at all of the nearby tracts, including the Whitehall and Randall Tracts may be disrupted by noise associated with the tunnel excavation activities.		notice to the homeowners' associations of each residence tract at least two weeks prior to construction activities occurring within 0.5 mile of that recreation residence tract. 6.12-5c Post notices at each tract indicating the nature, timing, and duration of all materials transport and construction activities occurring within 0.5 mile of that recreation residence tract.	
Biological Resources			
Aquatic Biological Resources			
7.4-9 <i>Maintenance Activities.</i> Operating Project No. 184 necessitates on-going maintenance of the existing facilities, which can include maintenance-related construction activities. Such activities can affect botanical resources, including special status plants, through direct removal and trampling.	Significant	Prior to conducted ground disturbing maintenance activities, EID or designated contractor will implement the following measures to avoid or reduce impacts on special status plants: 7.4-9a Conduct season-appropriate surveys of the habitats and areas where maintenance-related impacts to sensitive plant species could occur. Such surveys must be undertaken when the plants are flowering. The flowering period occurs during May through July, depending upon the plant and the elevation of the habitat. In the event special status plants are located during these surveys, the following measures will be	The EID Board of Directors directed that the stated mitigation measure(s) be incorporated into the project as a required condition of approval. The Commission finds, based on substantial evidence in the record, that this measure is appropriate and feasible, and will lessen to a less-than-significant (acceptable) level, or avoid, the impact.

Findings of Fact for Acquisition, Permanent Repair, and Operation of the El Dorado Hydroelectric Project and Acquisition of 17,000 Acre-Feet per Year of New Consumptive Water: EIR Impacts and Mitigation Measures

Environmental Impacts	Level of Significance	Adopted Mitigation Measures	Findings of Fact ⁽¹⁾
		<p>implemented:</p> <p>7.4-9b Conduct an educational session with Project No. 184 employees to identify areas of avoidance, along with methods to avoid incidental impacts, such as limiting off-road vehicle use.</p> <p>7.4-9c Avoid impacts to special status plant species through the use of alternative sites, points of access, or methods of construction.</p> <p>7.4-9d When avoidance is not possible, consult with the DFG, FWS, and Forest Service to select preferred methods of off-setting the impact, including the relocation of the affected plants, and/or off site enhancement.</p>	
Cultural Resources			
<p>7.5-1 <i>Maintenance and Operations at South Fork Facilities.</i> The typical kinds of maintenance-related construction associated with the operation of Project No. 184 could include ground disturbance, including access roadway improvements and minor excavations for such things as: replacement of canal lining; or installation of foundations for flumes and pipelines. Future ground</p>	Potentially Significant	<p>7.5-1a EID will continue to comply with Article 35 of FERC's December 11, 1980 Order Issuing License.</p>	<p>The EID Board of Directors directed that the stated mitigation measure(s) be incorporated into the project as a required condition of approval. The Commission finds, based on substantial evidence in the record, that this measure is appropriate and feasible, and will lessen to a less-than-significant (acceptable) level, or avoid, the impact.</p>

Findings of Fact for Acquisition, Permanent Repair, and Operation of the El Dorado Hydroelectric Project and Acquisition of 17,000 Acre-Feet per Year of New Consumptive Water: EIR Impacts and Mitigation Measures

Environmental Impacts	Level of Significance	Adopted Mitigation Measures	Findings of Fact ⁽¹⁾
disturbing activities have the potential to damage known or unknown cultural resources.			
Energy and Mineral Resources			
Hazards			
7.8-4 <i>Risk of Upset.</i> Some maintenance activities associated with the operation of Project No. 184 would be expected to utilize heavy equipment and helicopters, which present a risk of accidental release of hazardous substances such as oil, fuel and hydraulic fluid.	Significant	EID will implement the following mitigation measure to reduce impacts due to risk of upset to a less than significant level. 7.8-4a All vehicles associated with the repair carry hazardous spill kits called "Acme Barrels" that have supplies needed to contain any accidental spill. All hazardous materials will be handled following the requirements on the Material Safety Data Sheet (MSDS) for each substance. By continuing to follow these guidelines the operation of Project No. 184 will not result in an increased risk of accidental explosion or release of hazardous substances.	The EID Board of Directors directed that the stated mitigation measure(s) be incorporated into the project as a required condition of approval. The Commission finds, based on substantial evidence in the record, that this measure is appropriate and feasible, and will lessen to a less-than-significant (acceptable) level, or avoid, the impact.
7.8-5 <i>Fire Risk.</i> Employee and maintenance contractor activities associated with the operation of Project No. 184 have the potential to increase the risk of fire in the vicinity of the project.	Significant	EID will implement the following mitigation measure to reduce fire risk impacts to a level that is less than significant: 7.8-5a Compliance with existing fire prevention guidelines is required to assure a finding of less-than-significant impact.	The EID Board of Directors directed that the stated mitigation measure(s) be incorporated into the project as a required condition of approval. The Commission finds, based on substantial evidence in the record, that this measure is appropriate and feasible, and will lessen to a less-than-significant (acceptable) level, or avoid, the impact.
Impacts Due to the Addition of 17,000 af (Chapter 8 of the Final EIR)			

Findings of Fact for Acquisition, Permanent Repair, and Operation of the El Dorado Hydroelectric Project and Acquisition of 17,000 Acre-Feet per Year of New Consumptive Water: EIR Impacts and Mitigation Measures

Environmental Impacts	Level of Significance	Adopted Mitigation Measures	Findings of Fact ⁽¹⁾
Evaluation of Growth-Inducing Impacts			
Aesthetic Resources			
8.2-1 <i>Scenic Views, Light and Glare.</i> Growth and development within the planning area could result in physical changes of the existing rural/natural lands to a built (urban) land use pattern/form; and the introduction of light and glare into the newly established or expanded built (urban) communities.	Significant and Unavoidable	8.2-1a EID recommends the El Dorado County Board of Supervisors (EDCBOS) adopt protective measures for the reduction of light and glare and the protection of rural and natural lands. Such measures may include goals, objectives, and policies to guide development within the service area. The recommended measures are set forth in section 8.2.2.2 of the DEIR at pages 8-19 through 8-22.	The EID Board of Directors found that there are no feasible mitigation measures or alternatives that the Board could adopt that would reduce this impact to a less-than-significant level. This impact, therefore, is identified as significant and unmitigable. The Board further found, based on substantial evidence in the record, that the stated measure(s) is appropriate and feasible, and could lessen the impact, but not conclusively to a less-than-significant (acceptable) level. The stated measure is a change or alteration of the project that is within the responsibility and jurisdiction of the EDCBOS. The Commission concurs and concludes that this measure can and should be adopted by the EDCBOS, but because implementation of the measure is outside of the control of the Commission, and because residual impact after implementation is uncertain, this impact is conservatively considered to remain significant and unmitigable.
Air Quality			
8.2-2 <i>Emissions.</i> Growth and development	Significant and	8.2-2a EID recommends the EDCBOS	The EID Board of Directors found that there

Findings of Fact for Acquisition, Permanent Repair, and Operation of the El Dorado Hydroelectric Project and Acquisition of 17,000 Acre-Feet per Year of New Consumptive Water: EIR Impacts and Mitigation Measures

Environmental Impacts	Level of Significance	Adopted Mitigation Measures	Findings of Fact ⁽¹⁾
<p>within the planning are could result in increases in short-term and long-term emissions; toxic air emissions; exposure of sensitive receptors to substantial pollutant concentrations; and conflict with programs in APCD Air Quality Attainment Plan.</p>	Unavoidable	<p>re-adopt protective measures that reduce short-term emissions, long-term emissions, toxic air emissions, exposure of sensitive receptors to substantial pollutant concentrations, and conflicts with programs in APCD Air Quality Attainment Plan.</p> <p>The recommended measures are set forth at section 8.2.3.2 of the DEIR at pages 8-22 through 8-30.</p>	<p>are no feasible mitigation measures or alternatives that the Board could adopt that would reduce this impact to a less-than-significant level. This impact, therefore, is identified as significant and unmitigable. The Board further found, based on substantial evidence in the record, that the stated measure(s) is appropriate and feasible, and could lessen the impact, but not conclusively to a less-than-significant (acceptable) level. The stated measure is a change or alteration of the project that is within the responsibility and jurisdiction of the EDCBOS. The Commission concurs and concludes that this measure can and should be adopted by the EDCBOS, but because implementation of the measure is outside of the control of the Commission, and because residual impact after implementation is uncertain, this impact is conservatively considered to remain significant and unmitigable.</p>
Biological Resources			
<p>8.2-3 <i>Loss of Wildlife and Fisheries Habitat, and Special Plant Communities.</i> Growth and development within the planning area could result in the following impacts associated with wildlife and fisheries habitat, and special plant communities:</p> <p>Direct or indirect loss and fragmentation of wildlife habitat and/or</p>	Significant and Unavoidable	<p>8.2-3a EID recommends that the EDCBOS reconsider and adopt the mitigation measures identified in the General Plan EIR, which include goals, objectives, policies, and procedures that would protect habitat and habitat values for botanical, fisheries, and wildlife resources.</p> <p>With the implementation of the proposed measures, these impacts remain significant</p>	<p>The EID Board of Directors found that there are no feasible mitigation measures or alternatives that the Board could adopt that would reduce this impact to a less-than-significant level. This impact, therefore, is identified as significant and unmitigable. The Board further found, based on substantial evidence in the record, that the stated measure(s) is appropriate and feasible, and could lessen the impact, but not conclusively to a less-than-significant (acceptable) level.</p>

Findings of Fact for Acquisition, Permanent Repair, and Operation of the El Dorado Hydroelectric Project and Acquisition of 17,000 Acre-Feet per Year of New Consumptive Water: EIR Impacts and Mitigation Measures

Environmental Impacts	Level of Significance	Adopted Mitigation Measures	Findings of Fact ⁽¹⁾
<p>degradation of habitat values: Aquatic and Riparian Habitat.</p> <p>Increased rates of flow and volumes of water... may scour streambeds affecting the quality of aquatic plant communities and cobble distribution which support fisheries, including spawning areas.</p> <p>Increases in rates and/or volumes of flow into [lake] resources may cause sedimentation, leading to degradation of fisheries habitat values.</p> <p>Increased water pollution from urban and rural runoff may be ingested by aquatic wildlife, resulting in disease and mortality.</p> <p>Construction of roads and other public facilities, logging and agricultural activities, and miscellaneous improvements in urban areas may result in diversions or interruptions in the flow of surface or subsurface waters to unique habitats such as vernal pools, small lakes and/or ponds, ephemeral creeks, or other aquatic resources.</p> <p>Site improvement activities may result in the direct removal and/or filling of riparian habitat, vernal pools, ephemeral creeks and streams, and similar small swamps and marshes.</p> <p>Elimination, disturbance, or interruption of special-status species as a direct or indirect result of development.</p> <p>Direct or indirect loss and</p>		<p>and unavoidable.</p> <p>The recommended measures are set forth at section 8.2.4.2 of the DEIR at pages 8-31 through 8-33.</p>	<p>The stated measure is a change or alteration of the project that is within the responsibility and jurisdiction of the EDCBOS. The Commission concurs and concludes that this measure can and should be adopted by the EDCBOS, but because implementation of the measure is outside of the control of the Commission, and because residual impact after implementation is uncertain, this impact is conservatively considered to remain significant and unmitigable.</p>

Findings of Fact for Acquisition, Permanent Repair, and Operation of the El Dorado Hydroelectric Project and Acquisition of 17,000 Acre-Feet per Year of New Consumptive Water: EIR Impacts and Mitigation Measures

Environmental Impacts	Level of Significance	Adopted Mitigation Measures	Findings of Fact ⁽¹⁾
fragmentation of wildlife habitat and/or degradation of habitat values. Disruption of deer migration patterns and critical deer habitat.			
8.2-4 <i>Effects of Treated Wastewater Discharges on Fisheries.</i> Use of the 17,000 acre feet of water within the planning area could result in the substantial discharge of treated wastewater into fishery habitat.	Significant and Unavoidable	8.2-4a EID is currently expanding the Deer Creek and El Dorado Hills wastewater treatment plants. The expansion is described in section 8.2.4.2.1 of the DEIR at page 8-34.	The EID Board of Directors has already implemented the stated mitigation measure. The Board further found that there are no additional feasible mitigation measures or alternatives that the Board could adopt at this time which would reduce this impact to a less-than-significant level. This impact, therefore, remains significant and unmitigable. To the extent that this adverse impact will not be eliminated or lessened to an acceptable (less-than-significant) level, the Commission concurs and concludes that specific economic, social, and other considerations identified in the Statement of Overriding Considerations support approval of the project as modified, despite unavoidable residual impacts.
8.2-5 <i>Rare and Endangered Native Plants.</i> Build out of the planning area could result in the loss of special-status plants associated with the Pine Hill Formation.	Significant and Unavoidable	EID will implement the following measures to assure the protection of rare and endangered native plants: 8.2-5a Cooperate with the County in establishing preserve sites for eight sensitive plant species known as the Pine Hill endemics and their habitats (specifically identified gabbro and serpentine soils). The implementation of this mitigation measure will reduce the potential impacts	The EID Board of Directors directed that the stated mitigation measure must be incorporated into the conditions of approval for the project. The Board further found that there are no additional feasible mitigation measures or alternatives that the Board could adopt which would reduce this impact to a less-than-significant level. This impact, therefore, remains significant and unmitigable. To the extent that this adverse impact will not be eliminated or lessened to an acceptable (less-than-significant) level, the Commission concurs and concludes that specific economic, social, and other considerations identified in

Findings of Fact for Acquisition, Permanent Repair, and Operation of the El Dorado Hydroelectric Project and Acquisition of 17,000 Acre-Feet per Year of New Consumptive Water: EIR Impacts and Mitigation Measures

Environmental Impacts	Level of Significance	Adopted Mitigation Measures	Findings of Fact ⁽¹⁾
		to sensitive plant species, but will not reduce the impact to a less-than-significant level.	the Statement of Overriding Considerations support approval of the project as modified, despite unavoidable residual impacts.
		<p>8.2-5b EID recommends that the EDCBOS reconsider and adopt the mitigation measures identified in the General Plan EIR, including measures previously rejected, which include goals, objectives and policies that would protect rare and endangered native plants.</p> <p>These measures are set forth in section 8.2.4.2.2 of the DEIR at pages 8-35 through 8-36.</p>	<p>The EID Board of Directors found that there are no feasible mitigation measures or alternatives that the Board could adopt at this time that would reduce this impact to a less-than-significant level. This impact, therefore, is identified as significant and unmitigable. The Board further found, based on substantial evidence in the record, that the stated measure(s) is appropriate and feasible, and could lessen the impact, but not conclusively to a less-than-significant (acceptable) level. The stated measure is a change or alteration of the project that is within the responsibility and jurisdiction of the EDCBOS. The Commission concurs and concludes that this measure can and should be adopted by the EDCBOS, but because implementation of the measure is outside of the control of the Commission and because residual impact after implementation is uncertain, this impact is conservatively considered to remain significant and unmitigable.</p>
8.2-6 <i>Wildlife Habitat and Riparian Corridors.</i> Build out of the general plan area could result in the alteration or loss of wildlife habitat and riparian	Significant and Unavoidable	8.2-6a EID recommends that the EDCBOS reconsider and adopt mitigation measures identified in the General Plan EIR, including	The EID Board of Directors hereby found that there are no feasible mitigation measures or alternatives that the Board could adopt at this time that would reduce this impact to a less-than-significant level. This impact, therefore,

Environmental Impacts	Level of Significance	Adopted Mitigation Measures	Findings of Fact ⁽¹⁾
corridors.		<p>measures previously rejected that would reduce impacts on wildlife habitat and riparian corridors.</p> <p>8.2-6b To assure the protection of wildlife habitat and riparian corridors, EID will cooperate with El Dorado County and other agencies to develop a County-wide habitat conservation plan that addresses all fish and wildlife species that may be impacted by the land development activities associated with population growth.</p> <p>These measures are set forth in section 8.2.4.2.3 of the DEIR at pages 8-37 through 8-40.</p>	<p>is identified as significant and unmitigable. The Board further found, based on substantial evidence in the record, that the stated measure(s) is appropriate and feasible, and could lessen the impact, but not conclusively to a less-than-significant (acceptable) level. The stated measure is a change or alteration of the project that is within the responsibility and jurisdiction of the EDCBOS. The Commission concurs and concludes that this measure can and should be adopted by the EDCBOS, but because implementation of the measure is outside of the control of the Commission and because residual impact after implementation is uncertain, this impact is conservatively considered to remain significant and unmitigable.</p> <p>The EID Board of Directors found that there are no feasible mitigation measures or alternatives that the Board could adopt at this time that would reduce this impact to a less-than-significant level. This impact, therefore, is identified as significant and unmitigable. The Board further found, based on substantial evidence in the record, that the stated measure(s) is appropriate and feasible, and could lessen the impact, but not conclusively to a less-than-significant (acceptable) level. The stated measure is a change or alteration of the project that is within the responsibility and jurisdiction of the EDCBOS. The Commission concurs and concludes that this measure can and should be adopted by the EDCBOS, but</p>

Findings of Fact for Acquisition, Permanent Repair, and Operation of the El Dorado Hydroelectric Project and Acquisition of 17,000 Acre-Feet per Year of New Consumptive Water: EIR Impacts and Mitigation Measures

Environmental Impacts	Level of Significance	Adopted Mitigation Measures	Findings of Fact ⁽¹⁾
			because implementation of the measure is outside of the control of the Commission and because residual impact after implementation is uncertain, this impact is conservatively considered to remain significant and unmitigable.
Cultural Resources			
<p>8.2-7 <i>Historic, Pre-historic, and Ethnographic Resources.</i> Building within the general plan area could result in the loss of the following cultural resources: historic, prehistoric, or ethnographic resources. The General Plan EIR identified the following potential impacts associated with cultural resources:</p> <p>Disturbance or destruction of prehistoric or historic sites, properties, or areas of ethnic significance, "important archaeological resources" and properties eligible for inclusion in the National Register of Historic Places.</p> <p>Indirect impacts through an increase in human activity.</p> <p>Development in the form of road construction, construction activities for the placement of sewer and water lines and other utilities, and home construction, could all contribute to the damage or disruption to the County's</p>	Significant and Unavoidable	<p>8.2-7a EID recommends that the EDCBOS reconsider and adopt mitigation measures identified in the General Plan EIR that include policies that would preserve and protect cultural resources within the general plan area.</p> <p>These measures are set forth in section 8.2.5.2 of the DEIR at pages 8-41 through 8-43.</p>	<p>The EID Board of Directors found that there are no feasible mitigation measures or alternatives that the Board could adopt at this time that would reduce this impact to a less-than-significant level. This impact, therefore, is identified as significant and unmitigable. The Board further found, based on substantial evidence in the record, that the stated measure(s) is appropriate and feasible, and could lessen the impact, but not conclusively to a less-than-significant (acceptable) level. The stated measure is a change or alteration of the project that is within the responsibility and jurisdiction of the EDCBOS. The Commission concurs and concludes that this measure can and should be adopted by the EDCBOS, but because implementation of the measure is outside of the control of the Commission and because residual impact after implementation is uncertain, this impact is conservatively considered to remain significant and unmitigable.</p>

Findings of Fact for Acquisition, Permanent Repair, and Operation of the El Dorado Hydroelectric Project and Acquisition of 17,000 Acre-Feet per Year of New Consumptive Water: EIR Impacts and Mitigation Measures

Environmental Impacts	Level of Significance	Adopted Mitigation Measures	Findings of Fact ⁽¹⁾
<p>cultural resources.</p> <p>Potential deterioration or demolition of [historic] structures. This impact can occur within townsites or on individual scattered parcels throughout the County.</p> <p>Indirect impacts take the form of disturbance due to hiking/equestrian trails, off-road vehicle use, and other human-related activities. The potential for vandalism is also increased.</p>			
Energy and Mineral Resources			
<p>8.2-8 <i>Conservation of Energy and Mineral Resources.</i> Additional development could result in reduction of the amount of land available for mineral resource extraction.</p>	<p>Significant and Unavoidable</p>	<p>8.2-8a EID recommends that the EDCBOS reconsider and adopt the mitigation measures identified in the General Plan EIR, which include policies that would preserve and protect the energy and mineral resources within the planning area.</p> <p>These measures are set forth in section 8.2.6.2 of the DEIR at page 8-44.</p>	<p>The EID Board of Directors found that there are no feasible mitigation measures or alternatives that the Board could adopt at this time that would reduce this impact to a less-than-significant level. This impact, therefore, is identified as significant and unmitigable. The Board further found, based on substantial evidence in the record, that the stated measure(s) is appropriate and feasible, and could lessen the impact, but not conclusively to a less-than-significant (acceptable) level. The stated measure is a change or alteration of the project that is within the responsibility and jurisdiction of the EDCBOS. The Commission concurs and concludes that this measure can and should be adopted by the EDCBOS, but because implementation of the measure is outside of the control of the Commission and because residual impact after implementation is uncertain, this impact is conservatively considered to remain significant</p>

Findings of Fact for Acquisition, Permanent Repair, and Operation of the El Dorado Hydroelectric Project and Acquisition of 17,000 Acre-Feet per Year of New Consumptive Water: EIR Impacts and Mitigation Measures

Environmental Impacts	Level of Significance	Adopted Mitigation Measures	Findings of Fact ⁽¹⁾
			and unmitigable.
Geology and Soils			
<p>8.2-9 <i>Unsafe Geologic and Soil Conditions.</i> Development within the General Plan area could result in the exposure of persons and property to unsafe geological and soil conditions, including the following: Increased development in areas potentially subject to seismic hazards. Additional development will result in substantial grading and construction activities in areas of known soil instability and steep slopes, resulting in accelerated erosion and sedimentation. Additional development could occur in areas with expansive soils. Additional development could occur in areas subject to landslides and avalanche hazards.</p>	Significant and Unavoidable	<p>8.2-9a EID recommends that the EDCBOS reconsider and adopt the mitigation measures identified in the General Plan EIR that include policies that would protect people from unsafe geologic and soil conditions. These measures are set forth in section 8.2.7.2 of the DEIR at pages 8-46 to 8-47.</p>	<p>The EID Board of Directors found that there are no feasible mitigation measures or alternatives that the Board could adopt at this time that would reduce this impact to a less-than-significant level. This impact, therefore, is identified as significant and unmitigable. The Board further found, based on substantial evidence in the record, that the stated measure(s) is appropriate and feasible, and could lessen the impact, but not conclusively to a less-than-significant (acceptable) level. The stated measure is a change or alteration of the project that is within the responsibility and jurisdiction of the EDCBOS. The Commission concurs and concludes that this measure can and should be adopted by the EDCBOS, but because implementation of the measure is outside of the control of the Commission and because residual impact after implementation is uncertain, this impact is conservatively considered to remain significant and unmitigable.</p>
Hazards			
<p>8.2-10 <i>Hazardous Materials and Handling.</i> Build out of the general plan area could increase the amount of hazardous materials handling within the County, leading to the following conditions: Increased use, storage, manufacture,</p>	Significant and Unavoidable	<p>8.2-10a EID recommends that the EDCBOS reconsider and adopt the mitigation measures identified in the General Plan EIR, which include policies that would reduce the threat of hazardous materials,</p>	<p>The EID Board of Directors found that there are no feasible mitigation measures or alternatives that the Board could adopt at this time that would reduce this impact to a less-than-significant level. This impact, therefore, is identified as significant and unmitigable.</p>

Findings of Fact for Acquisition, Permanent Repair, and Operation of the El Dorado Hydroelectric Project and Acquisition of 17,000 Acre-Feet per Year of New Consumptive Water: EIR Impacts and Mitigation Measures

Environmental Impacts	Level of Significance	Adopted Mitigation Measures	Findings of Fact ^[1]
<p>transport, and disposal of hazardous materials.</p> <p>Additional development could occur on lands contaminated by hazardous waste. Additional population in the County will affect planning for response to extraordinary situations associated with natural disasters, technological incidents, and National Security Emergencies.</p>		<p>and hazardous waste and would maintain adequate emergency planning and response capability. These measures are set forth in section 8.2.16.2 of the DEIR on pages 8-88 through 8-89 and section 8.2.13.2 of the DEIR at pages 8-75 through 8-76.</p>	<p>The Board further found, based on substantial evidence in the record, that the stated measure(s) is appropriate and feasible, and could lessen the impact, but not conclusively to a less-than-significant (acceptable) level. The stated measure is a change or alteration of the project that is within the responsibility and jurisdiction of the EDCBOS. The Commission concurs and concludes that this measure can and should be adopted by the EDCBOS, but because implementation of the measure is outside of the control of the Commission and because residual impact after implementation is uncertain, this impact is conservatively considered to remain significant and unmitigable.</p>
<p>8.2-11 <i>Dumping of Hazardous Materials.</i> Illegal hazardous waste dumping would be expected to increase as the population of the County grows to higher levels within the plan area.</p>	<p>Significant and Unavoidable</p>	<p>8.2-11a EID recommends that the EDCBOS reconsider and adopt the mitigation measures identified in the General Plan EIR, which include policies that would reduce the threat of hazardous materials and hazardous waste and would maintain adequate emergency planning and response capability.</p> <p>These measures are set forth in section 8.2.13.2 of the DEIR at page 8-76 and section 8.2.16.2 of the DEIR at page 8-88.</p>	<p>The EID Board of Directors found that there are no feasible mitigation measures or alternatives that the Board could adopt at this time that would reduce this impact to a less-than-significant level. This impact, therefore, is identified as significant and unmitigable. The Board further found, based on substantial evidence in the record, that the stated measure(s) is appropriate and feasible, and could lessen the impact, but not conclusively to a less-than-significant (acceptable) level. The stated measure is a change or alteration of the project that is within the responsibility and jurisdiction of the EDCBOS. The Commission concurs and concludes that this measure can and should be adopted by the EDCBOS, but because implementation of the</p>

Findings of Fact for Acquisition, Permanent Repair, and Operation of the El Dorado Hydroelectric Project and Acquisition of 17,000 Acre-Feet per Year of New Consumptive Water: EIR Impacts and Mitigation Measures

Environmental Impacts	Level of Significance	Adopted Mitigation Measures	Findings of Fact ⁽¹⁾
			measure is outside of the control of the Commission and because residual impact after implementation is uncertain, this impact is conservatively considered to remain significant and unmitigable.
Hydrology and Water Quality			
<p>8.2-12 <i>Water Quality, Water Supply, and Groundwater Availability.</i> Buildout of the general plan area may result in the alteration of local hydrology, including the following conditions.</p> <p>With the build out of the general plan are associated with increased demand for public water service, and a reduction in existing service levels could occur.</p> <p>Additional growth will occur in areas which are dependent on private wells for water, potentially affecting the quality and quantity of groundwater.</p> <p>Increase in surface water pollutants.</p> <p>Increase in groundwater pollutants.</p>	Significant and Unavoidable	<p>8.2-12a EID recommends that the EDCBOS reconsider and adopt the mitigation measures identified in the General Plan EIR, which include policies that would preserve surface and ground water quality, and the availability of ground water.</p> <p>These measures are set forth in section 8.2.9.2 of the DEIR at pages 8-51 through 8-55.</p> <p>EID can reasonably implement the following mitigation measures to assure</p>	<p>The EID Board of Directors found that there are no feasible mitigation measures or alternatives that the Board could adopt at this time that would reduce this impact to a less-than-significant level. This impact, therefore, is identified as significant and unmitigable. The Board further found, based on substantial evidence in the record, that the stated measure(s) is appropriate and feasible, and could lessen to the impact, but not conclusively to a less-than-significant (acceptable) level. The stated measure is a change or alteration of the project that is within the responsibility and jurisdiction of the EDCBOS. The Commission concurs and concludes that this measure can and should be adopted by the EDCBOS, but because implementation of the measure is outside of the control of the Commission and because residual impact after implementation is uncertain, this impact is conservatively considered to remain significant and unmitigable.</p> <p>The EID Board of Directors found that there are no feasible mitigation measures or</p>

Findings of Fact for Acquisition, Permanent Repair, and Operation of the El Dorado Hydroelectric Project and Acquisition of 17,000 Acre-Feet per Year of New Consumptive Water: EIR Impacts and Mitigation Measures

Environmental Impacts	Level of Significance	Adopted Mitigation Measures	Findings of Fact ⁽¹⁾
		<p>the protection of water resources, as follows.</p> <p>8.2-12b Annually provide information to the public regarding drought tolerant landscaping and efficient building design for water conservation, along with information on existing incentives for conservation and wise use of water.</p> <p>8.2-12c Encourage the County in its development of criteria and a draft ordinance to allow and encourage the use of domestic gray water for landscape irrigation purposes.</p> <p>8.2-12d Cooperate with the County Planning Department to provide information to the public on appropriate drought-tolerant plant species that can be used in landscaping instead of non-native plant species (see Policy 7.3.5.1 of the Conservation and Open Space Element).</p> <p>8.2-12e Cooperate with the County in a program of ongoing conversion of open ditch systems, where feasible and appropriate, to</p>	<p>alternatives that the Board could adopt at this time that would reduce this impact to a less-than-significant level. This impact, therefore, is identified as significant and unmitigable. The Board further found, based on substantial evidence in the record, that the stated measure(s) is appropriate and feasible, and could lessen the impact, but not conclusively to a less-than-significant (acceptable) level. The stated measure is a change or alteration of the project that is within the responsibility and jurisdiction of the EDCBOS. The Commission concurs and concludes that this measure can and should be adopted by the EDCBOS, but because implementation of the measure is outside of the control of the Commission and because residual impact after implementation is uncertain, this impact is conservatively considered to remain significant and unmitigable.</p>

Findings of Fact for Acquisition, Permanent Repair, and Operation of the El Dorado Hydroelectric Project and Acquisition of 17,000 Acre-Feet per Year of New Consumptive Water: EIR Impacts and Mitigation Measures

Environmental Impacts	Level of Significance	Adopted Mitigation Measures	Findings of Fact ⁽¹⁾
		<p>closed conduits and/or reclaimed water supplies (see Policy 7.3.5.4 of the Conservation and Open Space Element).</p> <p>8.2-12f Cooperate with the County in encouraging water reuse programs to conserve raw or potable water supplies consistent with State law. These measures are set forth in section 8.2.10.2 of the DEIR at page 8-61.</p>	
Land Use and Planning			
<p>8.2-13 <i>Land Use Conflicts:</i> Within the plan area, land use conflicts may develop during build out of the general plan, including:</p> <p>Land use compatibility</p> <p>Increase in commercial and industrial growth potential</p> <p>Alteration of existing patterns of development</p> <p>Development could result in non-contiguous development patterns and urban/suburban sprawl</p> <p>Internal inconsistency of policies and land use map</p>	Significant and Unavoidable	<p>8.2-13a EID recommends that the EDCBOS should reconsider and adopt the mitigation measures identified in the General Plan EIR that include goals, objects, and policies that would further reduce the land use impacts within the planning area.</p> <p>These measures are set forth in section 8.2.10.2 of the DEIR at pages 8-57 through 8-68.</p>	<p>The EID Board of Directors found that there are no feasible mitigation measures or alternatives that the Board could adopt at this time that would reduce this impact to a less-than-significant level. This impact, therefore, is identified as significant and unmitigable. The Board further found, based on substantial evidence in the record, that the stated measure(s) is appropriate and feasible, and could lessen the impact, but not conclusively to a less-than-significant (acceptable) level. The stated measure is a change or alteration of the project that is within the responsibility and jurisdiction of the EDCBOS. The Commission concurs and concludes that this measure can and should be adopted by the EDCBOS, but because implementation of the measure is outside of the control of the Commission and because residual impact after implementation is uncertain, this impact is</p>

Findings of Fact for Acquisition, Permanent Repair, and Operation of the El Dorado Hydroelectric Project and Acquisition of 17,000 Acre-Feet per Year of New Consumptive Water: EIR Impacts and Mitigation Measures

Environmental Impacts	Level of Significance	Adopted Mitigation Measures	Findings of Fact ⁽¹⁾
			conservatively considered to remain significant and unmitigable.
Noise			
8.2-14 <i>Increases in Noise Levels.</i> Within the plan area, build out of the general plan may result in the following: increases in traffic noise; increases in noise levels due to fixed or non-transportation noise sources; aircraft noise at proposed noise-sensitive land uses; and increases in background noise levels.	Significant and Unavoidable	8.2-14a EID recommends that the EDCBOS reconsiders adopting mitigation measures identified in the General Plan EIR that include goals, objects and policies that would further reduce impacts associated with noise in the planning area. These measures are set forth in section 8.2.11.2 of the DEIR at pages 8-69 through 8-71.	The EID Board of Directors found that there are no feasible mitigation measures or alternatives that the Board could adopt that would reduce this impact to a less-than-significant level. This impact, therefore, is identified as significant and unmitigable. The Board further found, based on substantial evidence in the record, that the stated measure(s) is appropriate and feasible, and could lessen the impact, but not conclusively to a less-than-significant (acceptable) level. The stated measure is a change or alteration of the project that is within the responsibility and jurisdiction of the EDCBOS. The Commission concurs and concludes that this measure can and should be adopted by the EDCBOS, but because implementation of the measure is outside of the control of the Commission and because residual impact after implementation is uncertain, this impact is conservatively considered to remain significant and unmitigable.
Population and Housing			
8.2-15 <i>Increased Population Growth and Jobs/housing Balance Continuing.</i> Implementation of the general plan could result in increased population and a continued jobs/housing ratio of less	Significant and Unavoidable	No mitigation measures reasonably available to EID have been identified that would improve the continued less than 1.0 jobs/housing ratio or decreased population growth. These impacts remain significant	The EID Board of Directors found that there are no feasible mitigation measures or alternatives that the Board could adopt that would reduce this impact to a less-than-significant level. This impact, therefore, is

Findings of Fact for Acquisition, Permanent Repair, and Operation of the El Dorado Hydroelectric Project and Acquisition of 17,000 Acre-Feet per Year of New Consumptive Water: EIR Impacts and Mitigation Measures

Environmental Impacts	Level of Significance	Adopted Mitigation Measures	Findings of Fact ⁽¹⁾
than one.		and unavoidable. 8.2-15a The EDCBOS should develop and consider adopting additional mitigation to reduce these impacts. These measures are set forth in section 8.2.12.1 of the DEIR at page 8-72.	identified as significant and unmitigable. The Board further found, based on substantial evidence in the record, that the stated measure(s) is appropriate and feasible, and could lessen the impact, but not conclusively to a less-than-significant (acceptable) level. The stated measure is a change or alteration of the project that is within the responsibility and jurisdiction of the EDCBOS. The Commission concurs and concludes that this measure can and should be adopted by the EDCBOS, but because implementation of the measure is outside of the control of the Commission and because residual impact after implementation is uncertain, this impact is conservatively considered to remain significant and unmitigable.
Public Services 8.2-16 Implementation of the proposed project may result in the following alterations of public services. <i>Fire Protection Services.</i> Reduction in existing levels of fire protection.	Potentially Significant	8.2-16a EID recommends that the EDCBOS implement mitigation identified in the General Plan goals, objects, and policies that would provide for adequate levels of public services within the planning area. These measures are set forth in section 8.2.13.2 of the DEIR at page 8-74.	The EID Board of Directors found that there are no feasible mitigation measures or alternatives that the Board could adopt that would reduce this impact to a less-than-significant level. This impact, therefore, is identified as significant and unmitigable. The Board further found, based on substantial evidence in the record, that the stated measure(s) is appropriate and feasible, and could lessen the impact, but not conclusively to a less-than-significant (acceptable) level. The stated measure is a change or alteration of the project that is within the responsibility and jurisdiction of the EDCBOS. The Commission concurs and concludes that this

Findings of Fact for Acquisition, Permanent Repair, and Operation of the El Dorado Hydroelectric Project and Acquisition of 17,000 Acre-Feet per Year of New Consumptive Water: EIR Impacts and Mitigation Measures

Environmental Impacts	Level of Significance	Adopted Mitigation Measures	Findings of Fact ⁽¹⁾
			measure can and should be adopted by the EDCBOS, but because implementation of the measure is outside of the control of the Commission and because residual impact after implementation is uncertain, this impact is conservatively considered to remain significant and unmitigable.
<i>Fire Hazards.</i> Additional residential development will occur in area mapped as high or very high wildland fire hazard areas.	Significant and Unavoidable	8.2-16b EID recommends that the EDCBOS reconsider and adopt mitigation identified in the General Plan EIR, including goals, objects, and policies that would provide for adequate levels of public services within the planning area. These measures are set forth in section 8.2.13.2 of the DEIR at pages 8-74 through 8-78.	The EID Board of Directors found that there are no feasible mitigation measures or alternatives that the Board could adopt at this time that would reduce this impact to a less-than-significant level. This impact, therefore, is identified as significant and unmitigable. The Board further found, based on substantial evidence in the record, that the stated measure(s) is appropriate and feasible, and could lessen the impact, but not conclusively to a less-than-significant (acceptable) level. The stated measure is a change or alteration of the project that is within the responsibility and jurisdiction of the EDCBOS. The Commission concurs and concludes that this measure can and should be adopted by the EDCBOS, but because implementation of the measure is outside of the control of the Commission and because residual impact after implementation is uncertain, this impact is conservatively considered to remain significant and unmitigable.
<i>Sheriff Services.</i> Development would require a substantial increase in the number of sworn officers assigned to	Significant and Unavoidable	8.2-16c EID recommends that the EDCBOS reconsider and adopt mitigation identified in the	The EID Board of Directors found that there are no feasible mitigation measures or alternatives that the Board could adopt at this

Findings of Fact for Acquisition, Permanent Repair, and Operation of the El Dorado Hydroelectric Project and Acquisition of 17,000 Acre-Feet per Year of New Consumptive Water: EIR Impacts and Mitigation Measures

Environmental Impacts	Level of Significance	Adopted Mitigation Measures	Findings of Fact ⁽¹⁾
patrol and investigative duties within the Sheriff's Department.		<p>General Plan EIR, including goals, objects, and policies that would provide for adequate levels of public services within the planning area.</p> <p>These measures are set forth in section 8.2.13.2 of the DEIR at pages 8-74 through 8-78.</p>	<p>time that would reduce this impact to a less-than-significant level. This impact, therefore, is identified as significant and unmitigable. The Board further found, based on substantial evidence in the record, that the stated measure(s) is appropriate and feasible, and could lessen the impact, but not conclusively to a less-than-significant (acceptable) level. The stated measure is a change or alteration of the project that is within the responsibility and jurisdiction of the EDCBOS. The Commission concurs and concludes that this measure can and should be adopted by the EDCBOS, but because implementation of the measure is outside of the control of the Commission and because residual impact after implementation is uncertain, this impact is conservatively considered to remain significant and unmitigable.</p>
<p><i>Schools.</i> Additional population will increase the demand on school districts for school facilities.</p>	Significant and Unavoidable	<p>8.2-16d EID recommends that the EDCBOS reconsider and adopt mitigation identified in the General Plan EIR, including goals, objects, and policies that would provide for adequate levels of public services within the planning area.</p> <p>These measures are set forth in section 8.2.13.2 of the DEIR at pages 8-74 through 8-78.</p>	<p>The Board of Directors found that there are no feasible mitigation measures or alternatives that the Board could adopt that would reduce this impact to a less-than-significant level. This impact, therefore, is identified as significant and unmitigable. The Board further found, based on substantial evidence in the record, that the stated measure(s) is appropriate and feasible, and could lessen the impact, but not conclusively to a less-than-significant (acceptable) level. The stated measure is a change or alteration of the project that is within the responsibility and jurisdiction of the EDCBO S. The Commission concurs and</p>

Findings of Fact for Acquisition, Permanent Repair, and Operation of the El Dorado Hydroelectric Project and Acquisition of 17,000 Acre-Feet per Year of New Consumptive Water: EIR Impacts and Mitigation Measures

Environmental Impacts	Level of Significance	Adopted Mitigation Measures	Findings of Fact ⁽¹⁾
			concludes that this measure can and should be adopted by the EDCBOS, but because implementation of the measure is outside of the control of the Commission, and because residual impact after implementation is uncertain, this impact is conservatively considered to remain significant and unmitigable.
<i>Child Care Services.</i> Population growth will result in a substantial increase in the need for affordable, licensed child care facility space.	Potentially Significant	8.2-16e EID recommends that the EDCBOS implement mitigation identified in the General Plan goals, objects, and policies that would provide for adequate levels of child care services within the planning area.	The EID Board of Directors found that there are no feasible mitigation measures or alternatives that the Board could adopt at this time that would reduce this impact to a less-than-significant level. This impact, therefore, is identified as significant and unmitigable. The Board further found, based on substantial evidence in the record, that the stated measure(s) is appropriate and feasible, and could lessen the impact, but not conclusively to a less-than-significant (acceptable) level. The stated measure is a change or alteration of the project that is within the responsibility and jurisdiction of the EDCBOS. The Commission concurs and concludes that this measure can and should be adopted by the EDCBOS, but because implementation of the measure is outside of the control of the Commission and because residual impact after implementation is uncertain, this impact is conservatively considered to remain significant and unmitigable.
Recreation			
8.2-17 <i>Lack of Parklands.</i> Insufficient	Significant and	8.2-17a EID recommends that the	The EID Board of Directors found that there

Findings of Fact for Acquisition, Permanent Repair, and Operation of the El Dorado Hydroelectric Project and Acquisition of 17,000 Acre-Feet per Year of New Consumptive Water: EIR Impacts and Mitigation Measures

Environmental Impacts	Level of Significance	Adopted Mitigation Measures	Findings of Fact ⁽¹⁾
parkland is available to achieve the standard of 5.0 acres/1,000 population of active parkland for the Cameron Park/El Dorado Hills areas, and 3.0 acres/1,000 population for the remainder of the County.	Unavoidable	EDCBOS consider and adopt measures that increase recreational opportunities within the planning area. These measures are set forth in section 8.2.14.2 of the DEIR at pages 8-79 through 8-78.	are no feasible mitigation measures or alternatives that the Board could adopt that would reduce this impact to a less-than-significant level. This impact, therefore, is identified as significant and unmitigable. The Board further found, based on substantial evidence in the record, that the stated measure(s) is appropriate and feasible, and could lessen the impact, but not conclusively to a less-than-significant (acceptable) level. The stated measure is a change or alteration of the project that is within the responsibility and jurisdiction of the EDCBOS. The Commission concurs and concludes that this measure can and should be adopted by the EDCBOS but because implementation of the measure is outside of the control of the Commission, and because residual impact after implementation is uncertain, this impact is conservatively considered to remain significant and unmitigable.
Transportation/Circulation			
8.2-18 <i>Increased Traffic and Roadway Alterations.</i> Implementation of the general plan would alter existing roadways and require expansion of facilities as noted in the following: Increase in roadway LOS (Level of Service) deficiencies. Increase in vehicle miles traveled and average trip lengths. Increase in average daily traffic volumes.	Significant and Unavoidable	In their Findings of Fact, the EDCBOS adopted mitigation measures that reduce the transportation-related impacts within the planning area. However, transportation-related impacts remain significant and unavoidable. 8.2-18a EID recommends that the EDCBOS reconsider and adopt the mitigation measures identified in the General Plan EIR, including goal, objects, and	The EID Board of Directors found that there were no feasible mitigation measures or alternatives that the Board could adopt that would reduce this impact to a less-than-significant level. This impact, therefore, is identified as significant and unmitigable. The Board further found, based on substantial evidence in the record, that the stated measure(s) is appropriate and feasible, and could lessen the impact, but not conclusively to a less-than-significant (acceptable) level. The stated measure is a change or alteration of

Findings of Fact for Acquisition, Permanent Repair, and Operation of the El Dorado Hydroelectric Project and Acquisition of 17,000 Acre-Feet per Year of New Consumptive Water: EIR Impacts and Mitigation Measures

Environmental Impacts	Level of Significance	Adopted Mitigation Measures	Findings of Fact ⁽¹⁾
Increase in required road sizes.		policies that would further reduce transportation impacts. These measures are set forth in section 8.2.15.2 of the DEIR at pages 8-83 through 8-86.	the project that is within the responsibility and jurisdiction of the EDCBOS. The Commission concurs and concludes that this measure can and should be adopted by the EDCBOS but because implementation of the measure is outside of the control of the Commission, and because residual impact after implementation is uncertain, this impact is conservatively considered to remain significant and unmitigable.
Utilities and Service Systems			
8.2-19 <i>Wastewater Treatment Facilities.</i> Additional development associated with the general plan build out of the planning area will increase the demand on EID wastewater collection and treatment facilities.	Significant and Unavoidable	8.2-19a EID is currently expanding the Deer Creek and El Dorado Hills wastewater treatment plants. The expansion is described in section 8.2.16.2 of the DEIR at pages 8-87 through 8-88.	The EID Board of Directors has already implemented the stated mitigation measure. The Board further found that there were no additional feasible mitigation measures or alternatives that the Board could adopt which would reduce this impact to a less-than-significant level. This impact, therefore, remains significant and unmitigable. To the extent that this adverse impact will not be eliminated or lessened to an acceptable (less-than-significant) level, the Commission concurs and concludes that specific economic, social, and other considerations identified in the Statement of Overriding Considerations support approval of the project as modified, despite unavoidable residual impacts.
8.2-20 <i>Increased Demand for Solid Waste Facilities and Expanded Services From PG&E.</i> Build out of the planning area will require additional solid waste facilities as development will increase generation of solid waste, and	Significant and Unavoidable	8.2-20a EID recommends that the EDCBOS consider and adopt measures that would reduce demand for solid waste facilities and expanded services from PG&E.	The EID Board of Directors found that there were no feasible mitigation measures or alternatives that the Board could adopt that would reduce this impact to a less-than-significant level. This impact, therefore, is identified as significant and unmitigable. The

Findings of Fact for Acquisition, Permanent Repair, and Operation of the El Dorado Hydroelectric Project and Acquisition of 17,000 Acre-Feet per Year of New Consumptive Water: EIR Impacts and Mitigation Measures

Environmental Impacts	Level of Significance	Adopted Mitigation Measures	Findings of Fact ⁽¹⁾
additional development will create a need for expanded services from PG&E.		These measures are set forth in section 8.2.16.2 of the DEIR at pages 8-88 through 8-90 and in section 8.2.13.2 of the DEIR at page 8-75.	Board further found, based on substantial evidence in the record, that the stated measure(s) is appropriate and feasible, and could lessen the impact, but not conclusively to a less-than-significant (acceptable) level. The stated measure is a change or alteration of the project that is within the responsibility and jurisdiction of the EDCBOS. The Commission concurs and concludes that this measure can and should be adopted by the EDCBOS but because implementation of the measure is outside of the control of the Commission, and because residual impact after implementation is uncertain, this impact is conservatively considered to remain significant and unmitigable.
<i>Evaluation of Impacts from Diverting and Distributing the 17,000 Acre-feet of New Consumptive Water</i>			
8.3-1 <i>Aquatic Habitat along the Lower American River.</i> Alternations to habitat suitability (i.e. river flows and temperature) that would adversely affect lower American River fisheries during the spawning, incubation, rearing, and emigration periods.	Significant and Unavoidable	<p>8.3-1a Operation of Folsom Reservoir consistent with the CPMM [Coldwater Pool Management Model].</p> <p>8.3-1b Installation of a Temperature Control Device at Folsom Dam.</p> <p>These measures are set forth in section 8.3.3.2 of the DEIR at page 8-95.</p>	The EID Board of Directors found that there are no feasible mitigation measures or alternatives that the Board could adopt that would reduce this impact to a less-than-significant level. This impact, therefore, is identified as significant and unmitigable. The Board further found, based on substantial evidence in the record, that the stated measure(s) is appropriate and feasible, and could lessen the impact, but not conclusively to a less-than-significant (acceptable) level. The stated measure is a change or alteration of the project that is within the responsibility and jurisdiction of the Bureau of Reclamation. The Commission concurs and concludes that this measure can and should be adopted by the

Findings of Fact for Acquisition, Permanent Repair, and Operation of the El Dorado Hydroelectric Project and Acquisition of 17,000 Acre-Feet per Year of New Consumptive Water: EIR Impacts and Mitigation Measures

Environmental Impacts	Level of Significance	Adopted Mitigation Measures	Findings of Fact ⁽¹⁾
			Bureau of Reclamation but because implementation of the measure is outside of the control of the Commission, and because residual impact after implementation is uncertain, this impact is conservatively considered to remain significant and unmitigable.
		8.3-1c EID shall comply with its Urban Water Management Plan and Water Conservation Plan.	The EID Board of Directors directed that the stated mitigation measures must be incorporated into the conditions of approval for the project. The Board further found that there are no additional feasible mitigation measures or alternatives that the Board could adopt which would reduce this impact to a less-than-significant level. This impact, therefore, remains significant and unmitigable. To the extent that this adverse impact will not be eliminated or lessened to an acceptable (less-than-significant) level, the Commission concurs and concludes that specific economic, social, and other considerations identified in the Statement of Overriding Considerations support approval of the project as modified, despite unavoidable residual impacts.
8.3-2 <i>Nimbus Salmon and Steelhead hatchery:</i> Alterations to hatchery operations during October and November due to elevated water temperatures of flow releases from Nimbus Dam.	Potentially Significant and Unavoidable	8.3-2a Operation of Folsom Reservoir consistent with the CPM. 8.3-2b Installation of a Temperature Control Device at Folsom Dam. These measures are set forth in section 8.3.3.2 of the DEIR at page 8-95.	The EID Board of Directors found that there are no feasible mitigation measures or alternatives that the Board could adopt that would reduce this impact to a less-than-significant level. This impact, therefore, is identified as significant and unmitigable. The Board further found, based on substantial evidence in the record, that the stated measure(s) is appropriate and feasible, and could lessen the impact, but not conclusively

Findings of Fact for Acquisition, Permanent Repair, and Operation of the El Dorado Hydroelectric Project and Acquisition of 17,000 Acre-Feet per Year of New Consumptive Water: EIR Impacts and Mitigation Measures

Environmental Impacts	Level of Significance	Adopted Mitigation Measures	Findings of Fact ⁽¹⁾
			to a less-than-significant (acceptable) level. The stated measure is a change or alteration of the project that is within the responsibility and jurisdiction of the Bureau of Reclamation. The Commission concurs and concludes that this measure can and should be adopted by the Bureau of Reclamation but because implementation of the measure is outside of the control of the Commission, and because residual impact after implementation is uncertain, this impact is conservatively considered to remain significant and unmitigable.
		8.3-2c EID will comply with its Urban Water Management Plan and Water Conservation Plan.	The EID Board of Directors directed that the stated mitigation measures must be incorporated into the conditions of approval for the project. The Board further found that there are no additional feasible mitigation measures or alternatives that the Board could adopt which would reduce this impact to a less-than-significant level. This impact, therefore, remains significant and unmitigable. To the extent that this adverse impact will not be eliminated or lessened to an acceptable (less-than-significant) level, the Commission concurs and concludes that specific economic, social, and other considerations identified in the Statement of Overriding Considerations support approval of the project as modified, despite unavoidable residual impacts.
<i>Evaluation of Impacts from Facilities for the Delivery of Water from Folsom Reservoir</i>			
8.3-4 <i>Aesthetics:</i> Project facilities may disrupt or degrade views, removal	Significant and Unavoidable	The programmatic review of the conceptual project identified the following measures that will be implemented to	The EID Board of Directors directed that the stated mitigation measure(s) be incorporated into the project as a required condition of

Findings of Fact for Acquisition, Permanent Repair, and Operation of the El Dorado Hydroelectric Project and Acquisition of 17,000 Acre-Feet per Year of New Consumptive Water: EIR Impacts and Mitigation Measures

Environmental Impacts	Level of Significance	Adopted Mitigation Measures	Findings of Fact ⁽¹⁾
landmark trees, create nighttime lighting or glare, and/or alter terrain and vegetation.		<p>reduce these impacts.</p> <p>8.3-4a Incorporate into final project design a landscape buffer around proposed pump stations that is compatible with the surrounding area.</p> <p>8.3-4b Incorporate into final project design the requirement that proposed pump stations shall be of neutral color that blends with surrounding landscape.</p> <p>8.3-4c Incorporate into final project design the requirement that fencing be appropriate to and compatible with surrounding area so as to blend into landscape.</p> <p>8.3-4d All grading would minimize potential for erosion and conform to natural topography.</p> <p>8.3-4e Minimize vegetation clearing to maximize screening of new facilities by existing vegetation.</p> <p>8.3-4f During specific segment design and environmental review, EID shall survey the selected route and required easements to determine the following:</p> <p>Determine health and vigor of all potentially impacted mature oaks (at least six inches dbh).</p> <p>Identify potential changes in alignment that would reduce loss</p>	<p>approval. This mitigation measure is a change or alteration of the project that is within the responsibility and jurisdiction of EID. The Board found, based on substantial evidence in the record, that this measure is appropriate and feasible, and should lessen to a less-than-significant (acceptable) level, or avoid, the impact. The Board or Commission concurs and concludes further found, however, that a certain conclusion regarding residual significance can not be made due to lack of project implementation details. Additionally, the length of time expected to elapse prior to project implementation may render such a conclusion speculative. This impact, therefore, is conservatively considered to remain significant and unmitigable.</p>

Findings of Fact for Acquisition, Permanent Repair, and Operation of the El Dorado Hydroelectric Project and Acquisition of 17,000 Acre-Feet per Year of New Consumptive Water: EIR Impacts and Mitigation Measures

Environmental Impacts	Level of Significance	Adopted Mitigation Measures	Findings of Fact ⁽¹⁾
		<p>of mature oaks and/or pines. Prepare a plan describing the location, plant materials, planting methods, maintenance methods, and monitoring program to replace lost trees.</p> <p>8.3-4g EID shall implement the tree replacement program specified in the preceding mitigation measure in the appropriate locations prior to construction.</p> <p>8.3-4h Prior to construction, EID shall mark individual trees to be protected during construction. EID shall place protective fencing around the dripline of individual trees to avoid injury to the tree during construction operations.</p> <p>8.3-4i Use only non-reflective roofing materials.</p> <p>8.3-4j Use only low-gloss paint or stain in neutral colors for all exterior painted surfaces.</p> <p>8.3-4k All glazing should be lightly tinted and nonreflective.</p> <p>8.3-4l Provide low-pressure sodium lights directed at the ground and toward the interior of the site.</p> <p>These measures are set forth in section 8.3.4.1.2 of the DEIR at page 8-99.</p>	

Findings of Fact for Acquisition, Permanent Repair, and Operation of the El Dorado Hydroelectric Project and Acquisition of 17,000 Acre-Feet per Year of New Consumptive Water: EIR Impacts and Mitigation Measures

Environmental Impacts	Level of Significance	Adopted Mitigation Measures	Findings of Fact ⁽¹⁾
<p>8.3-5 <i>Air Quality.</i> Construction and operation of the project facilities would generate some additional emissions.</p>	<p>Significant and Unavoidable</p>	<p>The programmatic review of the conceptual project identified measures that will be implemented to reduce these impacts.</p> <p>8.3-5a EID shall require contractors to apply water or chemical dust suppressants to all excavated or graded areas to prevent excessive dust.</p> <p>8.3-5b EID shall require contractors to cover or water all material transported off-site to prevent excessive releases of dust.</p> <p>8.3-5c EID shall require contractors to minimize the total construction area disturbed by clearing, excavation, and earth moving.</p> <p>8.3-5d EID shall limit on-site construction vehicle speeds to 15 mph.</p> <p>8.3-5e EID shall require contractors to sweep paved streets adjacent to the project as necessary to remove earthen material accumulated from construction operations.</p> <p>8.3-5f EID shall require all contractors to clean loose soil from construction vehicles before exiting the work site.</p> <p>8.3-5g EID shall require contractors to maintain all construction vehicle</p>	<p>The EID Board of Directors directed that the stated mitigation measure(s) be incorporated into the project as a required condition of approval. This mitigation measure is a change or alteration of the project that is within the responsibility and jurisdiction of EID. The Board found, based on substantial evidence in the record, that this measure is appropriate and feasible, and should lessen to a less-than-significant (acceptable) level, or avoid, the impact. The Board further found, and the Commission concurs and concludes, that a certain conclusion regarding residual significance can not be made due to lack of project implementation details. Additionally, the length of time expected to elapse prior to project implementation may render such a conclusion speculative. This impact, therefore, is conservatively considered to remain significant and unmitigable.</p>

Findings of Fact for Acquisition, Permanent Repair, and Operation of the El Dorado Hydroelectric Project and Acquisition of 17,000 Acre-Feet per Year of New Consumptive Water: EIR Impacts and Mitigation Measures

Environmental Impacts	Level of Significance	Adopted Mitigation Measures	Findings of Fact ⁽¹⁾
		<p>internal combustion engines according to manufacturer specifications.</p> <p>These measures are set forth in section 8.3.4.2.2 of the DEIR at page 8-101.</p>	
<p>8.3-6 <i>Botanical Resources.</i> Construction of the proposed facilities may result in the loss of trees, jurisdictional wetlands, and special status plant populations.</p>	Significant and Unavoidable	<p>The programmatic review of the conceptual project identified measures that will be implemented to reduce these impacts.</p> <p>8.3-6a During specific design and environmental assessments, EID shall survey the facility sites supporting tree resources and required easements to determine the following: Determine health and vigor of all potentially impacted mature oaks (at least six inches dbh). Identify potential changes in alignment that would reduce loss of mature oaks and/or pines. Prepare a plan describing the location, plant materials, planting methods, maintenance methods, and monitoring program to replace lost trees.</p> <p>8.3-6b Prior to construction, EID shall mark individual trees to be protected during construction. EID shall place protective fencing around the dripline of individual trees to avoid incidental injury to the tree during construction operations.</p>	<p>The EID Board of Directors directed that the stated mitigation measure(s) be incorporated into the project as a required condition of approval. This mitigation measure is a change or alteration of the project that is within the responsibility and jurisdiction of EID. The Board found, based on substantial evidence in the record, that this measure is appropriate and feasible, and should lessen to a less-than-significant (acceptable) level, or avoid, the impact. The Board further found, and the Commission concurs and concludes, that a certain conclusion regarding residual significance can not be made due to lack of project implementation details. Additionally, the length of time expected to elapse prior to project implementation may render such a conclusion speculative. This impact, therefore, is conservatively considered to remain significant and unmitigable.</p>

Findings of Fact for Acquisition, Permanent Repair, and Operation of the El Dorado Hydroelectric Project and Acquisition of 17,000 Acre-Feet per Year of New Consumptive Water: EIR Impacts and Mitigation Measures

Environmental Impacts	Level of Significance	Adopted Mitigation Measures	Findings of Fact ⁽¹⁾
		<p>8.3-6c EID shall delineate potential jurisdictional wetlands and other waters of the United States that could be affected by construction of the System facilities. EID shall coordinate with the U.S. Army Corps of Engineers (COE) to verify the delineation and prepare a mitigation plan, if required. If necessary, the constructed/enhanced mitigation habitats shall fully offset the loss of wetland habitat and include performance standards and monitoring protocols, as established by the COE.</p> <p>8.3-6d EID shall survey the selected conveyance routes and facilities footprints for special status plants. If any special-status populations are found that would be disturbed, the route would be modified to avoid the population if feasible.</p> <p>These measures are set forth in section 8.3.4.3.2 of the DEIR at pages 8-103 through 8-106.</p>	
<p>8.3-7 <i>Wildlife Resources.</i> Construction of the proposed facilities may cause the loss of wildlife habitat, disturbance of nesting birds, and disturbance and/or mortality to special status animals.</p>	<p>Significant and Unavoidable</p>	<p>The programmatic review of the conceptual project identified measures that will be implemented to reduce these impacts.</p> <p>8.3-7a Pre-construction surveys for nesting birds and protected reptiles will be conducted in the</p>	<p>The EID Board of Directors directed that the stated mitigation measure(s) be incorporated into the project as a required condition of approval. This mitigation measure is a change or alteration of the project that is within the responsibility and jurisdiction of EID. The Board found, based on substantial</p>

Findings of Fact for Acquisition, Permanent Repair, and Operation of the El Dorado Hydroelectric Project and Acquisition of 17,000 Acre-Feet per Year of New Consumptive Water: EIR Impacts and Mitigation Measures

Environmental Impacts	Level of Significance	Adopted Mitigation Measures	Findings of Fact ^[1]
		<p>vicinity of the proposed pumping facility.</p> <p>8.3-7b If nesting birds are located within the project area, project activities will not commence until after the young have fledged. Nesting will be monitored by the project biologist.</p> <p>8.3-7c If California Protected reptiles are observed in the project vicinity, they will be moved by a qualified biologist outside the area of potential impact. Fencing designed to exclude reptiles from re-entering the project area will be installed on the perimeter of the site. The construction crew will be informed of the identification, status and sensitivities of the protected reptiles prior to the start of construction. If any of those reptiles are found on-site, they will be removed from the area of impact and the project biologist will be notified.</p> <p>8.3-7d Project activities will not occur during the wintering season for bald eagles, December 1 to April 1.</p> <p>8.3-7e Roost trees that are utilized by wintering bald eagles will be protected during construction. No</p>	<p>evidence in the record, that this measure is appropriate and feasible, and should lessen to a less-than-significant (acceptable) level, or avoid, the impact. The Board further found, and the Commission concurs and concludes, that a certain conclusion regarding residual significance can not be made due to lack of project implementation details. Additionally, the length of time expected to elapse prior to project implementation may render such a conclusion speculative. This impact, therefore, is conservatively considered to remain significant and unmitigable.</p>

Findings of Fact for Acquisition, Permanent Repair, and Operation of the El Dorado Hydroelectric Project and Acquisition of 17,000 Acre-Feet per Year of New Consumptive Water: EIR Impacts and Mitigation Measures

Environmental Impacts	Level of Significance	Adopted Mitigation Measures	Findings of Fact ⁽¹⁾
		<p>ground disturbing activities will occur within the drip line of designated roost trees.</p> <p>8.3-7f Riparian habitat will be replaced either by revegetation of the new shoreline area or by contribution to an existing mitigation bank. The ratio of replacement will be determined through consultation with U.S. Army Corps of Engineers, U.S. Fish and Wildlife Service, and the California Department of Fish and Game. These measures are set forth in section 8.3.4.3.3 of the DEIR at pages 8-107 through 8-108.</p>	
8.3-8 <i>Aquatic Resources.</i> Operation of the proposed diversion may result in fish entrainment.	Significant	<p>As part of project planning, EID will include the following measure into the project:</p> <p>8.3-8a Fish screens will be included in the design for the proposed diversion.</p> <p>This measure is set forth in section 8.3.4.3.3 of the DEIR at pages 8-108 through 8-109.</p>	The EID Board of Directors directed that the stated mitigation measure(s) be incorporated into the project as a required condition of approval. This mitigation measure is a change or alteration of the project that is within the responsibility of EID. The Commission found, based on substantial evidence in the record, that this measure is appropriate and feasible, and will lessen to a less-than-significant (acceptable) level, or avoid, the impact.
8.3-9 <i>Cultural Resources.</i> During construction of the proposed facilities, destruction to cultural resources could occur.	Significant and Unavoidable	<p>The programmatic review of the conceptual project identified measures that will be implemented to reduce these impacts.</p> <p>8.3-9a When facilities of the proposed system have reached design stages, the construction easement</p>	The EID Board of Directors directed that the stated mitigation measure(s) be incorporated into the project as a required condition of approval. The Commission found, based on substantial evidence in the record, that this measure is appropriate and feasible, and should lessen to a less-than-significant

Findings of Fact for Acquisition, Permanent Repair, and Operation of the El Dorado Hydroelectric Project and Acquisition of 17,000 Acre-Feet per Year of New Consumptive Water: EIR Impacts and Mitigation Measures

Environmental Impacts	Level of Significance	Adopted Mitigation Measures	Findings of Fact ⁽¹⁾
		<p>for each segment of the conveyance routes and all of the associated facilities shall be reviewed for cultural resource impacts in order to determine the existence of historic or prehistoric resources.</p> <p>8.3-9b Cultural Resources Sensitivity Maps prepared by the North Central Information Center at Sacramento State University shall be compared to the final project-level design to assess areas that might be particularly susceptible to damage to cultural resources.</p> <p>8.3-9c A records search at the North Central Information Center, CSUS, shall be performed for construction easements (generally 50 feet in width) in order to establish and document cultural resources sites in areas not previously searched.</p> <p>8.3-9d Segments of the project for which cultural resources surveys predate 1990 shall be resurveyed by a qualified archaeologist. Survey area shall include construction easements (generally 50 feet in width) and the sites of associated facilities.</p>	<p>(acceptable) level, or avoid, the impact. The Board further found, and the Commission concurs and concludes, that a certain conclusion regarding residual significance can not be made due to lack of project implementation details. Additionally, the length of time expected to elapse prior to project implementation may render such a conclusion speculative. This impact, therefore, is conservatively considered to remain significant and unmitigable.</p>

Findings of Fact for Acquisition, Permanent Repair, and Operation of the El Dorado Hydroelectric Project and Acquisition of 17,000 Acre-Feet per Year of New Consumptive Water: EIR Impacts and Mitigation Measures

Environmental Impacts	Level of Significance	Adopted Mitigation Measures	Findings of Fact ⁽¹⁾
		<p>8.3-9e Areas not previously surveyed shall have an archaeological field survey performed, using current approved methods, by a qualified archaeologist in cooperation with the North Central Information Center, CSUS. Survey area shall include construction easements (generally 50 feet in width) and the sites of associated facilities.</p> <p>8.3-9f If human remains are discovered during the construction phase, all work shall stop in the affected area in accordance with Section VIII of Appendix K of CEQA. However, work can continue in unaffected areas. The coroner shall be notified of the discovery immediately. If the remains are of Native American origin, the Native American Heritage Commission in Sacramento, California shall be contacted immediately. The applicant shall arrange for an independent professional archaeologist to act as a consultant to develop a mitigation plan for the cultural resources of human remains.</p> <p>8.3-9g Identified sites shall be preserved through recommendations made by a qualified archaeologist,</p>	

Findings of Fact for Acquisition, Permanent Repair, and Operation of the El Dorado Hydroelectric Project and Acquisition of 17,000 Acre-Feet per Year of New Consumptive Water: EIR Impacts and Mitigation Measures

Environmental Impacts	Level of Significance	Adopted Mitigation Measures	Findings of Fact ⁽¹⁾
		<p>anthropologist, or other qualified professional.</p> <p>8.3-9h If cultural resources are encountered during construction, work shall be halted and a qualified archaeologist shall be retained to recommend appropriate mitigation measures. Although work must halt in the affected area, construction may continue in other, unaffected areas.</p> <p>8.3-9i Heavy equipment entering the project from Malcolm Dixon Road shall avoid the area of the schoolhouse in order to minimize the potential of damage to the structure.</p> <p>8.3-9j If subsurface paleontological resources (fossils) are encountered, a qualified paleontologist shall monitor grading activities with the power to halt or redirect grading to allow evaluation and recovery time. To keep grading delays to a minimum, the paleontologist shall be prepared to perform the evaluation and recover work as rapidly as consistent with acceptable scientific procedures.</p> <p>8.3-9k EID shall retain or provide an</p>	

Findings of Fact for Acquisition, Permanent Repair, and Operation of the El Dorado Hydroelectric Project and Acquisition of 17,000 Acre-Feet per Year of New Consumptive Water: EIR Impacts and Mitigation Measures

Environmental Impacts	Level of Significance	Adopted Mitigation Measures	Findings of Fact ⁽¹⁾
		<p>archaeologist to perform periodic inspections of grading disturbance at the pumping stations, along the pipeline right-of-way and at the water treatment plant expansion site.</p> <p>8.3-9f EID's archaeological consultant shall coordinate with Native American representatives to identify ethnographically sensitive areas along the proposed pipeline route.</p> <p>These measures are set forth in section 8.3.4.4.2 of the DEIR at pages 8-109 through 8-111.</p>	
8.3-10 <i>Energy and Mineral Resources.</i> Implementation of the proposed project is not expected to, but could, result in adverse impacts on energy and mineral resources.	Significant and Unavoidable	8.3-10a EID considers these impacts significant and will review the proposed facilities further under CEQA.	The EID Board of Directors found that there are no feasible mitigation measures or alternatives that the Board could adopt which would reduce this impact to a less-than-significant level. This impact, therefore, remains significant and unmitigable. To the extent that this adverse impact will not be eliminated or lessened to an acceptable (less-than-significant) level, the Commission concurs and concludes that specific economic, social, and other considerations identified in the Statement of Overriding Considerations support approval of the Project as modified, despite unavoidable residual impacts.
8.3-11 <i>Geology and Soils.</i> Implementation of the proposed project may result in increased potential for slope instability;	Significant and Unavoidable	The programmatic review of the conceptual project identified measures that will be implemented to reduce these	The EID Board of Directors directed that the stated mitigation measure(s) be incorporated into the project as a required condition of

Findings of Fact for Acquisition, Permanent Repair, and Operation of the El Dorado Hydroelectric Project and Acquisition of 17,000 Acre-Feet per Year of New Consumptive Water: EIR Impacts and Mitigation Measures

Environmental Impacts	Level of Significance	Adopted Mitigation Measures	Findings of Fact ⁽¹⁾
potential for pipeline severance/damage from ground shaking; and potential for increased soil erosion.		<p>impacts.</p> <p>8.3-11a EDCWA/EID shall conduct segment specific geotechnical evaluations (including trenching and boring) as part of any segment specific environmental assessment(s). Specific mitigation measures shall be specified at that time but may include:</p> <p>Implementing the recommendations of the geotechnical evaluations</p> <p>Implementing specific engineering solutions such as the stabilization of landslide areas through recompaction and the removal of sediments.</p> <p>8.3-11b EID shall design the pipeline to withstand a 6.5 g magnitude earthquake. Specific design criteria should be developed to overcome the potential for severance or damage.</p> <p>8.3-11c EID shall implement an erosion and sediment control plan (ESCP), spoil control plan (SCP), and reclamation plan (RP) prior to the completion of segment specific environmental assessments. The plans should</p>	<p>approval. The Board found, based on substantial evidence in the record, that this measure is appropriate and feasible, and should lessen to a less-than-significant (acceptable) level, or avoid, the impact. The Board further found, and the Commission concurs and concludes, that a certain conclusion regarding residual significance can not be made due to lack of project implementation details. Additionally, the length of time expected to elapse prior to project implementation may render such a conclusion speculative. This impact, therefore, is conservatively considered to remain significant and unmitigable.</p>

Findings of Fact for Acquisition, Permanent Repair, and Operation of the El Dorado Hydroelectric Project and Acquisition of 17,000 Acre-Feet per Year of New Consumptive Water: EIR Impacts and Mitigation Measures

Environmental Impacts	Level of Significance	Adopted Mitigation Measures	Findings of Fact ⁽¹⁾
		<p>include the following features:</p> <p>Goals for grading, stabilization, and revegetation.</p> <p>Methods, specifies list, planting densities, and management requirements for all restored area.</p> <p>Locations of all removals of native vegetation.</p> <p>Stabilization methods for cleared areas.</p> <p>Methods to reduce runoff across graded areas.</p> <p>Location, functions, and specifications of all sediment control devices.</p> <p>Implementation schedule for all erosion control measures.</p> <p>These measures are set forth in section 8.3.4.6.2 of the DEIR at pages 8-112 through 8-113.</p>	
<p>8.3-12 <i>Hazards.</i> Construction of the proposed project may result in wildfire ignition; exposure of people to construction dangers; risk of upset, and increased emergency response times.</p>	<p>Significant and Unavoidable</p>	<p>The programmatic review of the conceptual project identified measures that will be implemented to reduce these impacts.</p> <p>8.3-12a In areas of potential fire hazard, pipeline construction would occur outside the fire season when</p>	<p>The EID Board of Directors directed that the stated mitigation measure(s) be incorporated into the project as a required condition of approval. The Board found, based on substantial evidence in the record, that this measure is appropriate and feasible, and should lessen to a less-than-significant (acceptable) level, or avoid, the impact. The</p>

Findings of Fact for Acquisition, Permanent Repair, and Operation of the El Dorado Hydroelectric Project and Acquisition of 17,000 Acre-Feet per Year of New Consumptive Water: EIR Impacts and Mitigation Measures

Environmental Impacts	Level of Significance	Adopted Mitigation Measures	Findings of Fact ⁽¹⁾
		<p>conditions preclude high risk for wildfire ignition (November 1st to May 1st);</p> <p>OR</p> <p>During construction in areas of potential fire hazard, EID or its contractor shall implement fire risk reduction measures, that include onsite tools and equipment for fighting fires, vehicle parking areas with fire clearances, welding and other similar practices will be limited to the trench where flammable materials have been removed, equipment will be inspected for fire hazards, and construction crew will attend fire awareness training that will be conducted prior to construction.</p> <p>8.3-12b Hazardous spill kits called "Acme Barrels" that have supplies needed to contain any accidental spill shall be maintained on site at each work area.</p> <p>8.3-12c All hazardous materials will be handled following the requirements on the Material Safety Data Sheet (MSDS) for each substance.</p> <p>8.3-12d All blasting will be conducted by State licensed blasting contractors</p>	<p>Board further found, and the Commission concurs and concludes, that a certain conclusion regarding residual significance can not be made due to lack of project implementation details. Additionally, the length of time expected to elapse prior to project implementation may render such a conclusion speculative. This impact, therefore, is conservatively considered to remain significant and unmitigable.</p>

Findings of Fact for Acquisition, Permanent Repair, and Operation of the El Dorado Hydroelectric Project and Acquisition of 17,000 Acre-Feet per Year of New Consumptive Water: EIR Impacts and Mitigation Measures

Environmental Impacts	Level of Significance	Adopted Mitigation Measures	Findings of Fact ⁽¹⁾
		<p>and will be contained underground, reducing the risk of flying debris.</p> <p>8.3-12e Prior to road closure, EID will notify all emergency response centers within the El Dorado Hills area, including police, sheriff, ambulatory, and fire stations. Notification shall include the location of road closures, date and time of closure, and proposed alternate route.</p> <p>These measures are set forth in section 8.3.4.7.2 of the DEIR at pages 8-114 through 8-116.</p>	
<p>8.3-13 <i>Hydrology and Water Quality.</i> Construction of the proposed project may result in erosion, turbidity, and sedimentation due to construction of the pumping plant, and surface runoff. In addition, ground water quality could be altered.</p>	<p>Significant and Unavoidable</p>	<p>The programmatic review of the conceptual project identified measures that will be implemented to reduce these impacts.</p> <p>8.3-13a Silt curtains will be installed surrounding the waters where construction disturbances may result in turbid conditions. These will remain in place until turbidity has been reduced and construction disturbances are completed.</p> <p>8.3-13b All grading for these improvements will conform to El Dorado County Grading, Erosion, and Sediment Control Ordinance. In areas of potential erosion,</p>	<p>The EID Board of Directors directed that the stated mitigation measure(s) be incorporated into the project as a required condition of approval. The Board found, based on substantial evidence in the record, that this measure is appropriate and feasible, and should lessen to a less-than-significant (acceptable) level, or avoid, the impact. The Board further found, and the Commission concurs and concludes, that a certain conclusion regarding residual significance can not be made due to lack of project implementation details. Additionally, the length of time expected to elapse prior to project implementation may render such a conclusion speculative. This impact, therefore, is conservatively considered to remain significant and unmitigable.</p>

Findings of Fact for Acquisition, Permanent Repair, and Operation of the El Dorado Hydroelectric Project and Acquisition of 17,000 Acre-Feet per Year of New Consumptive Water: EIR Impacts and Mitigation Measures

Environmental Impacts	Level of Significance	Adopted Mitigation Measures	Findings of Fact ⁽¹⁾
		<p>following final grading the site will be seeded with an erosion control mix to reduce erosion potential. Silt fences or straw bales will be installed on slopes and in drainages to prevent turbidity and sedimentation from entering local waterways.</p> <p>8.3-13c Prior to design and construction of the proposed project EID will evaluate the groundwater conditions associated with each of the proposed facilities, and avoid areas of potential groundwater disturbance. If these aquifers cannot be avoided, EID will implement engineering designs that reduce these impacts to a level that is less-than-significant.</p> <p>These measures are set forth in section 8.3.4.8.2 of the DEIR at pages 8-116 through 8-118.</p>	
<p>8.3-14 <i>Land Use Planning.</i> Implementation of the proposed project may result in conflicts between the proposed pipelines and the future roadway improvements.</p>	<p>Significant and Unavoidable</p>	<p>The programmatic review of the conceptual project identified measures that will be implemented to reduce these impacts.</p> <p>8.3-14a EID shall consult with El Dorado County and Caltrans to avoid potential conflicts with future</p>	<p>The EID Board of Directors directed that the stated mitigation measure(s) be incorporated into the project as a required condition of approval. This mitigation measure is a change or alteration of the project that is within the responsibility and jurisdiction of EID. The Board found based on substantial evidence in the record, that this measure is</p>

Findings of Fact for Acquisition, Permanent Repair, and Operation of the El Dorado Hydroelectric Project and Acquisition of 17,000 Acre-Feet per Year of New Consumptive Water: EIR Impacts and Mitigation Measures

Environmental Impacts	Level of Significance	Adopted Mitigation Measures	Findings of Fact ⁽¹⁾
		<p>roadway projects and implement local realignments of pipeline alternatives that would avoid conflicts with existing roadways.</p> <p>This measure is set forth in section 8.3.4.9.2 of the DEIR at page 8-118.</p>	<p>appropriate and feasible, and should lessen to a less-than-significant (acceptable) level, or avoid, the impact. The Board further found, and the Commission concurs and concludes, that a certain conclusion regarding residual significance can not be made due to lack of project implementation details. Additionally, the length of time expected to elapse prior to project implementation may render such a conclusion speculative. This impact, therefore, is conservatively considered to remain significant and unmitigable.</p>
<p>8.3-15 <i>Noise.</i> Construction of the proposed facilities would result in increased noise levels.</p>	<p>Significant and Unavoidable</p>	<p>The programmatic review of the conceptual project identified measures that will be implemented to reduce these impacts.</p> <p>8.3-15a EID shall incorporate the following restrictions and measures into construction contract specifications:</p> <p>Construction operations shall be restricted within 1,000 feet of any occupied dwelling units on weekends, legal holidays, or between the hours of 7 p.m. and 7 a.m. on weekdays.</p> <p>All equipment shall have sound-control devices no less effective than those provided on the original equipment.</p> <p>No pile-driving or blasting operations shall be performed</p>	<p>The EID Board of Directors directed that the stated mitigation measure(s) be incorporated into the project as a required condition of approval. This mitigation measure is a change or alteration of the project that is within the responsibility and jurisdiction of the EID. The Board found, based on substantial evidence in the record, that this measure is appropriate and feasible, and should lessen to a less-than-significant (acceptable) level, or avoid, the impact. The Board further found, and the Commission concurs and concludes, that a certain conclusion regarding residual significance can not be made due to lack of project implementation details. Additionally, the length of time expected to elapse prior to project implementation may render such a conclusion speculative. This impact, therefore, is conservatively considered to remain significant and unmitigable.</p>

Findings of Fact for Acquisition, Permanent Repair, and Operation of the El Dorado Hydroelectric Project and Acquisition of 17,000 Acre-Feet per Year of New Consumptive Water: EIR Impacts and Mitigation Measures

Environmental Impacts	Level of Significance	Adopted Mitigation Measures	Findings of Fact ⁽¹⁾
		<p>within 3,000 feet of an occupied dwelling unit on weekends, legal holidays, or between the hours of 7 p.m. and 7 a.m. on weekdays.</p> <p>As directed by EID staff, the contractor shall implement appropriate additional noise attenuation measures, including changing the location of stationary construction equipment, shutting off idling equipment, rescheduling construction operations, notifying adjacent residences and recreation areas (i.e., Cameron Park Golf Course) in advance of construction activities, or other measures identified.</p> <p>These measures are set forth in section 8.3.4.10.2 of the DEIR at page 8-119.</p>	
<p>8.3-18 <i>Recreation.</i> Construction of the proposed conveyance facilities would disrupt and disturb golf course operations within the Western Service Area.</p>	<p>Significant and Unavoidable</p>	<p>The programmatic review of the conceptual project identified measures that will be implemented to reduce these impacts.</p> <p>8.3-18a Construction vehicles and other equipment shall use ingress/egress routes that minimize damage to golf course</p>	<p>The EID Board of Directors directed that the stated mitigation measure(s) be incorporated into the project as a required condition of approval. This mitigation measure is a change or alteration of the project that is within the responsibility and jurisdiction of EID. The Board found, based on substantial evidence in the record, that this measure is</p>

Findings of Fact for Acquisition, Permanent Repair, and Operation of the El Dorado Hydroelectric Project and Acquisition of 17,000 Acre-Feet per Year of New Consumptive Water: EIR Impacts and Mitigation Measures

Environmental Impacts	Level of Significance	Adopted Mitigation Measures	Findings of Fact ⁽¹⁾
		<p>fairways.</p> <p>8.3-18b Affected areas shall be returned immediately upon completion of pipeline construction within golf course boundaries.</p> <p>These measures are set forth in section 8.3.4.13.2 of the DEIR at page 8-121.</p>	<p>appropriate and feasible, and should lessen to a less-than-significant (acceptable) level, or avoid, the impact. The Board further found, and the Commission concurs and concludes, that a certain conclusion regarding residual significance can not be made due to lack of project implementation details. Additionally, the length of time expected to elapse prior to project implementation may render such a conclusion speculative. This impact, therefore, is conservatively considered to remain significant and unmitigable.</p>
<p align="center"><i>Projects With Potential Cumulative Effects Related to EID's Proposed Diversion of 17,000 afy of Consumptive Water from Folsom Reservoir Related to Projected Water Development in the American River Drainage Basin</i></p>			
<p><i>Water Supply and Hydrology</i></p> <p>9.4-1 Increased risk of deficiencies to CVP/SWP contractors. Deliveries to North of Delta CVP contractors would generally be greater with dry-year deficiencies in excess of 200,000 AF. Deliveries to South of Delta contractors would be less (120,000 to 250,000 AF) in 55% of the years. Deliveries to SWP contractors would be less by about 100,000 AF, 19% of the time. This could cause some impacts in the CVP and SWP Service Areas.</p>	<p>Significant and Unavoidable</p>	<p>9.4-1a EID shall continue to implement its Urban Water Management Plan and Water Conservation Plan.</p>	<p>The EID Board of Directors adopted the stated mitigation measure. Implementation of this mitigation measure would reduce, but not avoid or substantially lessen, this significant impact. Accordingly, the Commission concurs and concludes that this impact would remain significant even after implementation of this mitigation measure.</p>

Findings of Fact for Acquisition, Permanent Repair, and Operation of the El Dorado Hydroelectric Project and Acquisition of 17,000 Acre-Feet per Year of New Consumptive Water: EIR Impacts and Mitigation Measures

Environmental Impacts	Level of Significance	Adopted Mitigation Measures	Findings of Fact ⁽¹⁾
Fisheries and Aquatic Habitat			
9.4-2 <i>Lower American River:</i> Alterations to habitat suitability affecting fisheries during the spawning, incubation, rearing, and emigration periods. However, elevated water temperatures may be ameliorated by the temperature control device (TCD).	Significant and Unavoidable	9.4-2a EID shall continue to implement its Urban Water Management Plan and Water Conservation Plan. 9.4-2b Advocate for installation of the TCD on the urban water intake at Folsom Dam, as proposed by the Bureau of Reclamation.	The EID Board of Directors adopted the stated mitigation measure(s). Implementation of the stated mitigation measures would reduce, but not avoid or substantially lessen, this significant impact. Accordingly, the Commission concurs and concludes that this impact would remain significant even after implementation of these mitigation measures. However, these mitigation measures are within the responsibility and jurisdiction of other public agencies. The Commission concludes that those agencies can and should adopt the stated mitigation measure(s).
9.4-4 <i>Warm-water fish species in Folsom Reservoir.</i> Alterations to habitat suitability (i.e., reservoir water elevations and storage) that would adversely affect warm and cold-water fisheries in Folsom Reservoir.	Significant and Unavoidable	9.4-4a EID shall continue to implement its Urban Water Management Plan and Water Conservation Plan. 9.4-4b Advocate for installation of the TCD on the urban water intake at Folsom Dam, as proposed by the Bureau of Reclamation.	The Board of Directors adopted the stated mitigation measure(s). Implementation of the stated mitigation measures would reduce, but not avoid or substantially lessen, this significant impact. Accordingly, the Commission concurs and concludes that this impact would remain significant even after implementation of these mitigation measures. However, these mitigation measures are within the responsibility and jurisdiction of other public agencies. The Commission concludes that those agencies can and should adopt the stated mitigation measure(s).
9.4-6 <i>Upper Sacramento River Temperatures.</i> Alterations to temperature that would	Significant and Unavoidable	9.4-6a EID shall continue to implement its Urban Water Management	The EID Board of Directors adopted the stated mitigation measure. Implementation

Findings of Fact for Acquisition, Permanent Repair, and Operation of the El Dorado Hydroelectric Project and Acquisition of 17,000 Acre-Feet per Year of New Consumptive Water: EIR Impacts and Mitigation Measures

Environmental Impacts	Level of Significance	Adopted Mitigation Measures	Findings of Fact ⁽¹⁾
adversely affect upper Sacramento River fisheries including early-life-stage survival of fall-run, spring-run, and winter-run chinook salmon.		Plan and Water Conservation Plan.	of this mitigation measure would reduce, but not avoid or substantially lessen, this significant impact. Accordingly, the Commission concurs and concludes that this impact would remain significant even after implementation of this mitigation measure.
9.4-8 <i>Warm-water Fish at Clair Engle Reservoir.</i> Alterations to habitat suitability (i.e., reservoir water elevations and storage) that would adversely affect warm water fisheries at Clair Engle Reservoir.	Significant and Unavoidable	9.4-8a EID shall continue to implement its Urban Water Management Plan and Water Conservation Plan.	The EID Board of Directors adopted the stated mitigation measure. Implementation of this mitigation measure would reduce, but not avoid or substantially lessen, this significant impact. Accordingly, the Commission concurs and concludes that this impact would remain significant even after implementation of this mitigation measure.
9.4-9 <i>Lower Sacramento River Fisheries:</i> Lowered flow conditions resulting in elevated water temperatures during the critical July through September period.	Significant and Unavoidable	9.4-9a EID shall continue to implement its Urban Water Management Plan and Water Conservation Plan.	The EID Board of Directors adopted the stated mitigation measure. Implementation of this mitigation measure would reduce, but not avoid or substantially lessen, this significant impact. Accordingly, the Commission concurs and concludes that this impact would remain significant even after implementation of this mitigation measure.
9.4-10 <i>Delta Fisheries.</i> Potential to decrease quantity of freshwater inflow to the Delta (X2 changes).	Significant and Unavoidable	9.4-10a EID shall continue to implement its Urban Water Management Plan and Water Conservation Plan.	The EID Board of Directors adopted the stated mitigation measure. Implementation of this mitigation measure would reduce, but not avoid or substantially lessen, this significant impact. Accordingly, the Commission concurs and concludes that this

Findings of Fact for Acquisition, Permanent Repair, and Operation of the El Dorado Hydroelectric Project and Acquisition of 17,000 Acre-Feet per Year of New Consumptive Water: EIR Impacts and Mitigation Measures

Environmental Impacts	Level of Significance	Adopted Mitigation Measures	Findings of Fact ⁽¹⁾
			impact would remain significant even after implementation of this mitigation measure.
9.4-11 <i>Sacramento Splittail</i> . Potential to changes to flow and temperature changes would adversely effect Sacramento splittail.	Significant and Unavoidable	9.4-11a EID shall continue to implement its Urban Water Management Plan and Water Conservation Plan.	The EID Board of Directors adopted the stated mitigation measure. Implementation of this mitigation measure would reduce, but not avoid or substantially lessen, this significant impact. Accordingly, the Commission concurs and concludes that this impact would remain significant even after implementation of this mitigation measure.
<i>Terrestrial Habitats and Wildlife</i>			
9.4-12 <i>Lower Sacramento River</i> : Potential impacts to nearshore vegetation and the associated wildlife community.	Significant and Unavoidable	9.4-12a EID shall continue to implement its Urban Water Management Plan and Water Conservation Plan.	The EID Board of Directors adopted the stated mitigation measure. Implementation of this mitigation measure would reduce, but not avoid or substantially lessen, this significant impact. Accordingly, the Commission concurs and concludes that this impact would remain significant even after implementation of this mitigation measure.
9.4-13 <i>Lower American River</i> : Potential impacts to nearshore vegetation and the associated wildlife community.	Significant and Unavoidable	9.4-13a EID shall continue to implement its Urban Water Management Plan and Water Conservation Plan.	The EID Board of Directors adopted the stated mitigation measure. Implementation of this mitigation measure would reduce, but not avoid or substantially lessen, this significant impact. Accordingly, the Commission concurs and concludes that this impact would remain significant even after implementation of this mitigation measure.

Findings of Fact for Acquisition, Permanent Repair, and Operation of the El Dorado Hydroelectric Project and Acquisition of 17,000 Acre-Feet per Year of New Consumptive Water: EIR Impacts and Mitigation Measures

Environmental Impacts	Level of Significance	Adopted Mitigation Measures	Findings of Fact ⁽¹⁾
9.4-14 <i>Folsom Reservoir: Potential impacts to nearshore vegetation and the associated wildlife community (including sensitive species) along the shoreline.</i>	Significant and Unavoidable	9.4-14a EID shall continue to implement its Urban Water Management Plan and Water Conservation Plan.	The EID Board of Directors adopted the stated mitigation measure. Implementation of this mitigation measure would reduce, but not avoid or substantially lessen, this significant impact. Accordingly, the Commission concurs and concludes that this impact would remain significant even after implementation of this mitigation measure.
Recreation 9.4-15 <i>Lower Sacramento River: Potential impacts to recreational activities.</i>	Significant and Unavoidable	9.4-15a EID shall continue to implement its Urban Water Management Plan and Water Conservation Plan.	The EID Board of Directors adopted the stated mitigation measure. Implementation of this mitigation measure would reduce, but not avoid or substantially lessen, this significant impact. Accordingly, the Commission concurs and concludes that this impact would remain significant even after implementation of this mitigation measure.
9.4-16 <i>Lower American River: Potential impacts to recreational activities.</i>	Significant and Unavoidable	9.4-16a EID shall continue to implement its Urban Water Management Plan and Water Conservation Plan.	The EID Board of Directors adopted the stated mitigation measure. Implementation of this mitigation measure would reduce, but not avoid or substantially lessen, this significant impact. Accordingly, the Commission concurs and concludes that this impact would remain significant even after implementation of this mitigation measure.

Findings of Fact for Acquisition, Permanent Repair, and Operation of the El Dorado Hydroelectric Project and Acquisition of 17,000 Acre-Feet per Year of New Consumptive Water: EIR Impacts and Mitigation Measures

Environmental Impacts	Level of Significance	Adopted Mitigation Measures	Findings of Fact ⁽¹⁾
9.4-17 <i>Folsom Reservoir: Potential impacts to recreational activities.</i>	Significant and Unavoidable	9.4-17a EID shall continue to implement its Urban Water Management Plan and Water Conservation Plan.	The EID Board of Directors adopted the stated mitigation measure. Implementation of this mitigation measure would reduce, but not avoid or substantially lessen, this significant impact. Accordingly, the Commission concurs and concludes that this impact would remain significant even after implementation of this mitigation measure.
<i>Power Supply</i> 9.4-18 Potential to decrease net CVP load capacity.	Significant and Unavoidable	9.4-18a EID shall continue to implement its Urban Water Management Plan and Water Conservation Plan.	The EID Board of Directors adopted the stated mitigation measure. Implementation of this mitigation measure would reduce, but not avoid or substantially lessen, this significant impact. Accordingly, the Commission concurs and concludes that this impact would remain significant even after implementation of this mitigation measure.
9.4-19 Potential to impact capacity needed by CVP preference customers.	Significant and Unavoidable	9.4-19a EID shall continue to implement its Urban Water Management Plan and Water Conservation Plan.	The EID Board of Directors adopted the stated mitigation measure. Implementation of this mitigation measure would reduce, but not avoid or substantially lessen, this significant impact. Accordingly, the Commission concurs and concludes that this impact would remain significant even after

Findings of Fact for Acquisition, Permanent Repair, and Operation of the El Dorado Hydroelectric Project and Acquisition of 17,000 Acre-Feet per Year of New Consumptive Water: EIR Impacts and Mitigation Measures

Environmental Impacts	Level of Significance	Adopted Mitigation Measures	Findings of Fact ⁽¹⁾
			implementation of this mitigation measure.
9.4-20 Potential to reduce available CVP energy.	Significant and Unavoidable	9.4-20a EID shall continue to implement its Urban Water Management Plan and Water Conservation Plan.	The EID Board of Directors adopted the stated mitigation measure. Implementation of this mitigation measure would reduce, but not avoid or substantially lessen, this significant impact. Accordingly, the Commission concurs and concludes that this impact would remain significant even after implementation of this mitigation measure.
<i>Aesthetics/Visual Resources</i> 9.4-21 Potential to cause aesthetic/visual impacts by a change in lower American River or Sacramento River flows during the high recreation use months (i.e., May through September).	Significant and Unavoidable	9.4-21a EID shall continue to implement its Urban Water Management Plan and Water Conservation Plan.	The EID Board of Directors adopted the stated mitigation measure. Implementation of this mitigation measure would reduce, but not avoid or substantially lessen, this significant impact. Accordingly, the Commission concurs and concludes that this impact would remain significant even after implementation of this mitigation measure.
<i>Water Quality</i> 9.4-23 Potential to affect the quality of raw water diverted from Folsom Reservoir as a result of the TCD.	Potentially Significant and Unavoidable	9.4-23a EID shall continue to implement its Urban Water Management Plan and Water Conservation Plan.	The EID Board of Directors adopted the stated mitigation measure. Implementation of this mitigation measure would reduce, but not avoid or substantially lessen, this significant impact. Accordingly, the

Findings of Fact for Acquisition, Permanent Repair, and Operation of the El Dorado Hydroelectric Project and Acquisition of 17,000 Acre-Feet per Year of New Consumptive Water: EIR Impacts and Mitigation Measures

Environmental Impacts	Level of Significance	Adopted Mitigation Measures	Findings of Fact ⁽¹⁾
			Commission concurs and concludes that this impact would remain significant even after implementation of this mitigation measure.
9.4-24 Potential to affect seasonally the quality of water with the Sacramento River and Delta.	Significant and Unavoidable	9.4-24a EID shall continue to implement its Urban Water Management Plan and Water Conservation Plan.	The EID Board of Directors adopted the stated mitigation measure. Implementation of this mitigation measure would reduce, but not avoid or substantially lessen, this significant impact. Accordingly, the Commission concurs and concludes that this impact would remain significant even after implementation of this mitigation measure.
<i>Cultural Resources</i> 9.4-25 Potential to affect cultural resources by changing hydrologic regimes in Folsom Reservoir, lower American River, and lower Sacramento River.	Significant and Unavoidable	9.4-25a EID shall continue to implement its Urban Water Management Plan and Water Conservation Plan.	The EID Board of Directors adopted the stated mitigation measure. Implementation of this mitigation measure would reduce, but not avoid or substantially lessen, this significant impact. Accordingly, the Commission concurs and concludes that this impact would remain significant even after implementation of this mitigation measure.

Findings of Fact for Acquisition, Permanent Repair, and Operation of the El Dorado Hydroelectric Project and Acquisition of 17,000 Acre-Feet per Year of New Consumptive Water: EIR Impacts and Mitigation Measures

- [1] The findings in this column rely for evidentiary support on the Final EIR for this project entitled Acquisition: Permanent Repair, and Operation of the El Dorado Hydroelectric Project and Acquisition of 17,000 Acre-Feet per Year of New Consumptive Water. This EIR was prepared by the El Dorado Irrigation District and found to have been completed in full compliance with the California Environmental Quality Act (CEQA), and the information in the EIR was independently reviewed and evaluated by the California Public Utilities Commission, in the course of reaching a decision regarding the subject project.

The EIR contains a Table of Contents that can be used to locate specific information about any particular topic or area of impact. Specifically Chapters 4 through 9 of the Draft EIR (DEIR) volume provide the most comprehensively detailed analyses about various relevant issues. Additionally, the Response to Comments document includes additional clarification and amplification of parts of the DEIR analysis.

As related to each specified numbered impact (column 1) and related mitigation measure(s) (column 3), the information provided in the Final EIR, as well as other information that comprises the record for this project, were used to substantiate the identified findings of fact and provide an analytical route to reach the stated conclusion. The facts and analysis contained in the EIR are not repeated in these findings of fact, but may be referenced in more detail using the EIR Table of Contents.

(END OF APPENDIX B)

APPENDIX C

APPENDIX C
STATEMENT OF OVERRIDING CONSIDERATIONS

STATEMENT OF OVERRIDING CONSIDERATIONS

INTRODUCTION

In approving the project analyzed in the Final Environmental Impact Report ("EIR"), the California Public Utilities Commission ("Commission") makes the following Statement of Overriding Considerations in support of its findings on the EIR and in support of the project. The Commission has considered the information contained in the EIR and has fully reviewed and considered the record in this proceeding.

The Commission has carefully balanced the benefits of the project against the unavoidable adverse impacts identified in the EIR. Despite the disclosure of impacts identified in the EIR as significant or potentially significant, and which have not been eliminated or mitigated to a less-than-significant level, the Commission, acting pursuant to Public Resources Code Section 21081(b) and Sections 15043 and 15093 of the California Environmental Quality Act ("CEQA") Guidelines, hereby determines that the benefits of the project outweigh the significant unmitigated adverse environmental impacts and that the project should be approved.

SIGNIFICANT AND UNAVOIDABLE IMPACTS

The Board of the El Dorado Irrigation District has adopted mitigation measures to avoid or reduce the significant impacts identified in the EIR to the extent feasible. With regard to the acquisition, repair and operation of Project No. 184 for power generation and the delivery of up to 15,080 acre feet of water, the Commission finds that the mitigation measures proposed in the EIR and adopted by the El Dorado Irrigation District Board will reduce all the significant impacts to less than significant levels. With regard to the impacts of the acquisition of 17,000 acre feet of new consumptive water, however, the Commission finds that some impacts remain significant even after feasible mitigation measures have been adopted, and those impacts are therefore significant and unavoidable. These significant and unavoidable impacts are listed below:

Impacts due to the Addition of 17,000 Acre Feet¹

Growth-Inducing Impacts

Impact No.

on Exhibit A²

Description of Impact (for greater detail, see Exhibit A)

8.2-1

Scenic Views, Light and Glare

8.2.2

Air Quality Emissions

¹ "Impact No. on Exhibit A" refers to Chapter/ Section of the Final Environmental Impact Report for the Acquisition, Permanent Repair and Operation of the El Dorado Hydroelectric Project and Acquisition of 17,000 afy of New Consumptive Water, prepared for EID dated July, 1999.

² Exhibit A refers to Resolution 99-60 of the Board of Directors of the El Dorado Irrigation District certifying the Environmental Impact Report dated July 12, 1999.

APPENDIX C
STATEMENT OF OVERRIDING CONSIDERATIONS

8.2-3	Loss of Wildlife and Fisheries Habitat and Special Plant Communities
8.2-4	Effects of Treated Wastewater Discharges on Fisheries
8.2-5	Rare and Native Plants—Pine Hill Formation
8.2-6	Wildlife Habitat and Riparian Corridors
8.2-7	Historic, pre-historic and ethnographic resources
8.2-8	Reduction of land available for mineral resource extraction
8.2-9	Unsafe Geologic and Soil Conditions
8.2-10	Hazardous Materials and handling
8.2-11	Increased dumping of hazardous materials
8.2-12	Water quality, water supply and Groundwater availability. Increased demands for water, increase in water pollution
8.2-13	Land Use Conflicts
8.2-14	Increases in Noise Levels
8.2-15	Increased Population Growth and Jobs/Housing Balance
8.2-16	Increased need for fire, sheriff, school and child care services
8.2-17	Lack of parklands
8.2-18	Increased traffic and roadway alterations
8.2-19	Increased demand for wastewater treatment facilities
8.2-20	Increased demand for Solid Waste Facilities and Expanded Services from PG&E

Impacts from Diverting 17,000 Acre-feet of New Consumptive Water from Folsom Reservoir

<u>Impact No. on Exhibit A</u>	<u>Description of Impact (for greater detail, see Exhibit A)</u>
8.3.1	Aquatic habitat along the Lower American River
8.3.2	Nimbus Salmon and Steelhead hatchery

**Impacts from Facilities for the Pumping and Conveyance of Water from Folsom Reservoir
(Facilities examined at Programmatic Level)**

<u>Impact No. on Exhibit A</u>	<u>Description of Impact (for greater detail, see Exhibit A)</u>
8.3-4	Aesthetics
8.3-5	Air quality emissions

APPENDIX C
STATEMENT OF OVERRIDING CONSIDERATIONS

8.3-6	Botanical resources
8.3-7	Wildlife resources
8.3-9	Cultural resources
8.3-10	Energy and mineral resources
8.3-11	Geology and Soils
8.3-12	Hazards
8.3-13	Hydrology and Water Quality
8.3-14	Land Use Planning conflicts
8.3-15	Noise from Construction
8.3-18	Recreation—golf course disruption

Cumulative Impacts from Proposed Diversion of 17,000 Acre Feet from Folsom Reservoir

<u>Impact No. on Exhibit A</u>	<u>Description of Impact (for greater detail, see Exhibit A)</u>
9.4-1	Increased risk of deficiencies to CVP/SWP water contractors Impacts in CVP and SWP service areas
9.4-2	Lower American River Fisheries
9.4-4	Warm-water fish species in Folsom Reservoir
9.4-6	Upper Sacramento River temperatures
9.4-8	Warm water fish at Clair Engle Reservoir
9.4-9	Lower American River Fisheries
9.4-10	Delta Fisheries
9.4-11	Sacramento Splittail
9.4-12	Terrestrial habitat and wildlife—Lower Sacramento River
9.4-13	Terrestrial habitat and wildlife—Lower American River
9.4-14	Terrestrial habitat and wildlife—Folsom Reservoir
9.4-15	Recreation—Lower Sacramento River
9.4-16	Recreation—Lower American River
9.4-17	Recreation—Folsom Reservoir
9.4-18	Power Supply—Potential for decrease in net CVP load capacity
9.4-19	Power Supply—Potential to impact capacity needed by CVP preference customers

APPENDIX C
STATEMENT OF OVERRIDING CONSIDERATIONS

9.4-20	Power Supply—Potential to reduce available CVP energy
9.4-21	Aesthetics
9.4-23	Water quality—potential to affect quality of raw water diverted from Folsom Reservoir
9.4-24	Water quality—potential to affect seasonally the quality of water in the Sacramento River and Delta
9.4-25	Cultural resources—effects from changing hydrologic regimes

OVERRIDING CONSIDERATIONS

The Commission finds that there are specific social, economic and other reasons for approving this project, notwithstanding the disclosure of significant adverse impacts described and evaluated in the Final EIR for the project and listed in this Decision's Findings of Fact (Appendix B.) These significant adverse impacts are therefore found to be acceptable based on the whole of the evidence before us in the record of these proceedings.

The specific social, economic and other reasons for approving this project, which override the unavoidable impacts identified in the findings, are as listed below. Each benefit set forth below constitutes an overriding consideration warranting approval of the project, independent of the other benefits, despite each and every unavoidable impact.

1. The acquisition, repair and operation of Project No. 184 assures the continued delivery of up to 15,080 afy of water, which constitutes approximately one third of the El Dorado Irrigation District's ("EID") water supply. This water is the sole source serving the northeastern portion of EID's service area and also helps to supply by gravity the central portion of the Service Area.

2. The proposed permanent repairs would increase the reliability of this existing supply, restore year round diversions from the South Fork of the American River, and improve stability in fragile portions of land along the canal. A reliable supply is needed for fire suppression as well as municipal and agricultural uses.

3. The acquisition, repair and operation of Project No. 184, including power production, would contribute to affordability of EID water supplies for agricultural users, including farms and orchards in the EID Service Area. Alternatives not involving power generation would raise the cost of water to EID, making it difficult for agricultural operations to continue to purchase needed water. Agriculture contributes to the economic value of the crops and value to local tourism based on visits to Apple Hill and wineries, and it contributes to open space and rural ambience.

4. The acquisition, repair and operation of Project No. 184, including power production, would generate energy from a renewable, non-polluting source and would provide a cost-effective source of water to EID.

APPENDIX C
STATEMENT OF OVERRIDING CONSIDERATIONS

5. The project includes a fish screen on the diversion structure at Kyburz, which will avoid entrainment of fish into the Canal. The Canal has not been screened in the past. This will result in improved conditions for fish.

6. EID will operate in accordance with a Lake Level Operational Commitment that will keep lake levels in Silver Lake as high as possible through Labor Day.

CONCLUSION

For the reasons listed above, including the public benefits listed in the Findings of Fact, information in the EIR and other information in the record, the Commission finds that the benefits of the project outweigh the residual significant unavoidable impacts, and that the project should be approved.

(END OF APPENDIX C)