

COMMUNICATIONS AND PROCESS PROTOCOLS

**FOR THE UPPER AMERICAN RIVER PROJECT
ALTERNATIVE LICENSING PROCESS
(FERC PROJECT NO. 2101)**

APPROVED: June 2002

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Foreword

These communication and process protocols expand upon the document titled “Overview of the Upper American River Project,” dated June 28, 2001. Also included in this document is a procedural schedule. The Sacramento Municipal Utility District, in cooperation with interested parties actively participating in the Alternative Licensing Process for the Upper American River Project (UARP), developed this document. (See Appendix A for a list of the participants.)

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ACKNOWLEDGEMENT

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1.0 OVERVIEW

The alternative licensing process (“ALP”) for the Upper American River Project (“UARP”) has four main components:

- A coordinated National Environmental Policy Act (“NEPA”) review process, in which the Sacramento Municipal Utility District (“SMUD”), in cooperation with stakeholders and with the assistance of the Federal Energy Regulatory Commission (“FERC”), prepares a preliminary draft environmental assessment (“EA”) that will be submitted to FERC along with the UARP license application. The NEPA review process will also be coordinated with responsibilities under the California Environmental Quality Act (“CEQA”);
- Broad public participation and open, efficient sharing of information, including the development and use of a Hydro Relicensing Internet web site which will be available to the public;
- A cooperative, consensus-based approach to identifying and designing licensing studies, analyzing study data, and developing measures for protection, mitigation, and enhancement (“PM&E measures”); and
- An early start on the relicensing process and a clear, workable schedule, to enable FERC to issue a new license for the Upper American River Project (“UARP”) before the current license expires, without sacrificing the opportunity to conduct comprehensive studies and analysis of the benefits and impacts of the Project.

1.1 Applicant-Prepared Preliminary Draft EA

As provided under paragraph 4(iii) of FERC’s regulations governing alternative licensing procedures, 18 C.F.R. § 4.34(i)(4)(iii), SMUD in cooperation with stakeholders will prepare a preliminary draft EA of SMUD’s license application for the UARP. SMUD will coordinate with FERC to ensure, as appropriate, that the public scoping, studies, other information gathering, and analyses conducted for the preliminary draft EA also satisfy FERC’s information needs and analytical needs for an environmental impact statement (“EIS”), in the event that FERC decides to prepare an EIS with respect to the UARP license application. Coordinated efforts with FERC shall not include communications that are covered by FERC’s ex parte rules so as to limit any stakeholder’s ability to intervene in a later proceeding. As provided under 18 C.F.R. § 4.34(i)(6)(iv), SMUD will file the preliminary draft EA with the UARP license application, in lieu of exhibit E.

In addition, the NEPA review process will be coordinated with review of the license application under CEQA. SMUD, as the lead agency under CEQA, will work with the FERC to use the public scoping, studies, analyses conducted pursuant to NEPA and the preliminary draft EA to prepare documents under CEQA and NEPA, consistent with Title 14, California Code of Regulations, sections 15220-15228. A principal goal of the ALP process is to develop a single, efficient environmental review process that meets the requirements of separate state and federal statutory provisions. In order to facilitate that goal, SMUD will identify the scope of the project and any proposed modifications as early as possible.

1.2 Broad and Active Public Participation

The ALP will be an open, public process in which resource agencies, Native American tribes, citizens' groups, businesses, other organizations, and members of the public have been encouraged to participate. Parties with an interest in the relicensing proceeding (organizations or individuals) may participate actively ("Participants") or may passively observe or offer only limited comments, as they prefer. To encourage broad public participation, SMUD will maintain a Hydro Relicensing web site through which material in the public record will be conveniently available. To facilitate cooperation and the open exchange of information, SMUD and the other Participants will endeavor to share information and communications, both formal and informal, with all Participants. SMUD will provide public access to technical data regarding the UARP and licensing studies. To minimize costs, SMUD and the other Participants will rely on electronic communication, as appropriate. To encourage participation, SMUD will make funding assistance available to non-governmental organizations ("NGOs") to facilitate participation of these organizations.

1.3 Consensus-Based Decision-Making

Participants will seek to establish consensus on studies needed, study methodologies, appropriate PM&E measures, and other issues including but not limited to changes in the scope of the Project and any proposed Project modifications. Participants will seek consensus at all stages of the ALP:

1. Participants will seek consensus on final Communications and Process Protocols.
2. Participants will seek consensus during the project-related identification of issues, goals, and desired conditions.
3. Participants will seek consensus during the study-planning phase. Participants will seek consensus on which studies are needed, how the studies should be conducted, and how the results should be prepared and analyzed. SMUD anticipates that each study will be reviewed by a Technical Working Group with expertise regarding the subject matter.
4. Participants will seek consensus with regard to PM&E measures.

In addition, Participants will seek general consensus regarding the terms of the proposed license and the analysis and conclusions of the preliminary draft EA. The definition of consensus is provided in Section 3.9 – Decision-Making.

1.4 Early Start and Timely Completion

The ALP will start in 2001, one year before FERC’s regulations allow SMUD to file a notice of intent to file a license application. This early start will allow additional time for technical studies, particularly field studies that must be conducted during a seasonal window of opportunity in the Sierra Nevada. The early start will also give SMUD additional time to meet with Participants to discuss the results of the technical studies and evaluate the effects of the Project operations on resources within the Project area.

The licensing process will progress through five general phases. The first three phases will occur before the license application and the preliminary draft EA are filed. The fourth phase will occur during FERC’s review of the license application, and the fifth phase will occur after a new license has been issued.

<u>Phase</u>	<u>Description</u>	<u>Timeline</u>
Phase I	Review goals and desired conditions; identify issues; and concerns; design studies.....	2001 - 2002
Phase II	Conduct studies and prepare technical reports.....	2002 – 2004
Phase III	Analyze study results and develop PM&E measures; balance tradeoffs; prepare license application and preliminary draft EA; prepare draft CEQA Document.....	2003 - 2005
Phase IV	FERC review and licensing decision; finalize CEQA Document; SWRCB review and 401 certification decision	2005 - 2007
Phase V	Implementation of new license	2007+

2.0 PURPOSE OF THE ALP

The collective purpose of the Participants in the UARP ALP is to achieve agreement in a timely manner (consistent with the schedule provided in Appendix B) on resource management recommendations for the UARP relicensing that achieve a reasonable balance of environmental, economic and social outcomes, consistent with applicable agency policies, for inclusion as terms and conditions in a new FERC license for the UARP. All agreements and decisions reached within the timeframe leading up to the preparation of the License Application will be reflected in the License Application. This will include, if appropriate, the inclusion of a formal comprehensive agreement.

To fulfill this purpose, the Participants in the Plenary Group will:

- Develop reliable and scientifically credible information that can provide the basis for sound and effective decision-making.
- Identify and study the full set of issues early and work continuously to resolve as many issues as possible through the ALP.
- Seek to achieve comprehensive and timely settlement on PM&E measures that will serve as the basis for license terms and conditions. Agencies with mandatory conditioning authority will participate in the ALP with the goal of reaching agreement on PM&E measures, but will retain their independent statutory authority to condition the license.
- Make efficient use of financial resources.
- Develop and maintain an open process (with productive meetings) where all participants may safely voice opinions and work to reach creative solutions.
- Support the effort by adhering to deadlines, coming to meetings prepared, and taking other actions to contribute to progress.
- With the facilitator's assistance, establish priorities, deadlines and critical paths essential for progress and achievement of desired outcomes in a manner consistent with the overall relicensing schedule (see Appendix B) and FERC relicensing requirements.

3.0 ORGANIZATION AND RESPONSIBILITIES

3.1 Public Participation

The public will have several key opportunities to participate in the relicensing process:

- SMUD will host periodic public information meetings or workshops to solicit input from all interested parties and the public throughout the relicensing process. It is likely these meetings will occur in the evenings at various locations in El Dorado and Sacramento Counties. Participants will fully consider all comments offered during public information meetings.
- All meetings of the Plenary Group and the Technical Working Groups will be open to the public.
- NEPA/CEQA scoping will be conducted, and will give the public an opportunity to identify issues and concerns regarding the UARP.

- The public may submit written comments to SMUD for the public record at any time during the ALP.

In addition, once the license application and preliminary draft EA are filed with FERC, the public will have the opportunity to submit comments to FERC on the application and FERC's NEPA documents, and will have the opportunity to submit comments to the SWRCB on the request for certification of the UARP under Section 401 of the federal Clean Water Act and to the Forest Service on proposed conditions for the UARP under Section 4(e) of the Federal Power Act

3.2 UARP Cooperative Groups

The relicensing of the UARP will require the combined and concerted efforts of a cooperative group of active Participants. Participation in the UARP relicensing process requires a consistent and long-term commitment of time and energy. As a result of public workshops conducted by SMUD in May 2001, a number of interested parties have agreed to serve as active Participants in the process. These Participants represent a range of interests among state and federal regulatory agencies, non-governmental organizations, local governmental bodies, representatives of the business community and interested individuals. A list of such entities that have joined the Plenary Group (see definition below) is presented in Appendix A.

Participating organizations with multiple attendees are encouraged to designate a primary spokesperson to participate in the Plenary Group and applicable Technical Working Group (TWG) meetings. This individual should be able to speak for the organization during meetings and will be responsible for keeping the organization informed and supportive. Each Participant should strive to maintain the participation of a consistent representative. Because this is not always possible, however, the representative wishing to substitute another individual should inform the group as early as possible about the chosen alternate.

Each Participant should clarify his or her role and ability to make and/or deliver decisions for the organization represented. Also, all parties involved in decision-making within each organization will be identified. These roles should be clarified frequently so that Participants understand respective decision-making authorities and so that progress is achieved as efficiently and effectively as possible. Participants and agencies will make every effort to inform the Plenary Group of their organizations' legal review process and requirements, including the time frame required for review, to avoid delay in the ALP process.

Each Participant in the Plenary Group and Technical Working Groups (TWGs) agrees to act in good faith during the UARP cooperative process. Each Participant warrants that it will not use or distribute the information developed during the cooperative process to develop a competing application for itself or any other entity, or for any purpose other than participating in the UARP ALP. If a Participant decides to cease participation in the UARP cooperative process for any reason, the Participant will return any and all confidential information in its possession to the facilitator.

3.2.1 Limited Participation by Pacific Gas and Electric Company

SMUD and Pacific Gas and Electric Company (PG&E) have entered into a *Memorandum of Understanding for Cooperation Between the Sacramento Municipal Utility District and Pacific Gas and Electric Company on Relicensing of Upper American River Project and Chili Bar Project* (MOU1), dated May 31, 2002 and a *Second Memorandum of Understanding for Cooperation Between the Sacramento Municipal Utility District and Pacific Gas and Electric Company on Relicensing of Upper American River Project and Chili Bar Project* (MOU2), dated February 13, 2004. PG&E is the FERC licensee of the Chili Bar Project, FERC No. 2155, which is located just downstream of SMUD's White Rock Powerhouse which is part of UARP. The Chili Bar Project consists of a single powerhouse and reservoir with a nominal generating capacity of 7 MW. UARP and Chili Bar Project licenses expire in 2007, and SMUD and PG&E are each seeking to obtain new licenses for their respective projects from FERC. MOU1 and MOU2 provide a framework for SMUD and PG&E to work in cooperation and coordination on the relicensing of their respective projects. Both of these agreements provide that "each Party will limit its Direct Participation in the other Party's relicensing proceeding to those portions that address Overlapping Issues". Overlapping Issues are defined in both agreements as those issues common to both Projects, including, but not limited to: (a) quantity of flow into and out of Chili Bar Reservoir; (b) timing of flows into and out of Chili Bar Reservoir; and (c) operational coordination between White Rock Powerhouse and Chili Bar Powerhouse. Along with other considerations, SMUD agreed to use its best efforts to structure Settlement Negotiations to isolate Overlapping Issues in MOU2 in order to facilitate an efficient process, and PG&E also agreed to "Direct Participation in SMUD's Settlement Negotiations on Overlapping Issues." Direct Participation is defined in MOU2 as, "regular attendance (in person or by telephone) and participation in the Settlement Negotiations or related activities or tasks." Therefore, PG&E signs these Communications and Process Protocols expressly subject to and limited by the provisions of MOU1 and MOU2, and without waiving, amending or modifying in any manner whatsoever the provisions therein. PG&E furthermore does not consent to be subject to Section 3.10, "Dispute Resolution", below in these Communications and Process Protocols because of the potential impact on PG&E's relicensing of the Chili Bar Project.

3.3 Limited Participation by the State Water Resources Control Board

The State Water Resources Control Board (SWRCB) agrees to participate in the development of information regarding the UARP that may lead to a settlement among the interested parties. SWRCB staff will make their best efforts to raise any water resource issues that other agencies should consider in their approvals or that the SWRCB would consider in its necessary regulatory approvals. While the SWRCB can provide information that will help guide the parties toward a settlement that is likely to obtain the necessary regulatory approvals, the SWRCB cannot make a prior commitment to the outcome of any regulatory approval that must be issued by the SWRCB. The SWRCB acts in an adjudicative capacity when it acts on a request for water quality certification. The SWRCB must be an impartial decision-maker, avoiding bias, prejudice or interest, in any adjudicative proceedings conducted as part of the

SWRCB's regulatory approvals. The SWRCB will participate in the collaborative process with a view towards facilitating approvals by other agencies, encouraging settlement among the parties and other persons interested in proceedings before the SWRCB, and providing applicants, protestants and other interested persons with information concerning the requirements applicable to SWRCB approvals. The Participants anticipate that if a settlement agreement adequately addresses concerns raised as part of the collaborative process by the SWRCB, and all other Participants approve the settlement agreement, the settlement agreement is likely to form the basis of the SWRCB's approval.

Notwithstanding any other provision of this agreement, the SWRCB does not waive the right to act upon any application or petition for SWRCB approval in connection with the UARP license according to the SWRCB's own procedures. Consistent with the SWRCB's responsibilities as an agency acting in an adjudicative capacity, including the obligation to consider any arguments that may be raised or information provided by parties to the SWRCB proceedings who are not parties to the collaborative process or did not agree to any settlement reached as part of that process, the SWRCB cannot execute any settlement agreement or make any other commitment that would be binding on the SWRCB as part of its action on a request for water quality certification or other necessary SWRCB permit, license, or other regulatory approval. The SWRCB shall maintain its independent regulatory authority to condition the UARP operations to protect water quality and the beneficial uses of the affected lakes and stream reaches consistent with section 401 of the federal Clean Water Act, the Regional Water Quality Control Board Basin Plans, SWRCB regulations regarding water quality certifications, the California Environmental Quality Act, and any other applicable state law.

3.4 Plenary Group

A Plenary Group will be convened for the duration of the ALP. The Plenary Group will maintain a global perspective of the relicensing process. It will be self-governing, reaching decisions by consensus. The responsibilities of the Plenary Group will include the following:

- Establish the final procedural schedule (Appendix B) and structure (rules and procedures) for the ALP.
- Determine the schedule of meetings for the Plenary Group.
- Establish the TWGs and allocate responsibility for addressing specific resource issues.
- Review study plans and methodologies recommended by the TWGs and determine which studies should be conducted.
- Resolve disputes within and among the TWGs.

3.5 Technical Working Groups

TWGs will be established throughout the process to address particular issues or accomplish discrete tasks. These groups will be made up of representatives of the interested parties and will address specific resource issues, such as fishery resources, recreation, and cultural resources.

The TWGs will be self-governing, making decisions by consensus. Depending upon their size (number of participants) and the complexity of issues, the TWGs may elect to avail themselves of the services of the facilitator. The TWGs will communicate through a variety of means, including, but not limited to, meetings, teleconferences, mail, and e-mail. Meeting locations will vary and will be determined by the participants in each TWG. Each TWG will have the following responsibilities:

- Establish rules, procedures, and a schedule for the TWG within the overarching structure and schedule established by the Plenary Group.
- Where appropriate, develop study plans and methodologies for the resource issues assigned to the TWG by the Plenary Group.
- Where appropriate and following the completion of relevant studies, review the study reports for their adequacy, determine that the methods used in the studies were adequate to answer the questions the studies set out to answer, and where appropriate, draw conclusions from the information presented in the study reports.
- Appoint a spokesperson to be responsible for making periodic presentations to the Plenary Group on TWG work products and recommendations.

3.6 Late Participation

Interested parties not participating during the initial formation meetings of the Plenary Group or the TWGs may join the ALP at any time by agreeing to accept the written communication and process protocols. Interested parties who join the ALP after it has begun have the responsibility to become knowledgeable regarding the information and agreements on the process and outcomes up to the point of their entry into the process. Because of the need to make efficient use of time, the Plenary Group and TWGs will not revisit discussions concerning resolved issues for the purposes of educating late participants. If a late Participant requests that the Plenary Group and/or TWGs revisit a previous decision, the late Participant must adequately demonstrate that: (1) it has an interest that may be affected by the decision that was not adequately represented by other Participants in the decision; and (2) the request will not unduly delay or prejudice the process. The Plenary Group and the facilitator will be responsible for maintaining progress and enforcing previous agreements.

3.7 Cost Recovery Program

SMUD recognizes the importance of broad public participation in the ALP, and that participation in the process will require a sustained and substantial commitment on the part of many organizations. Thus, SMUD will institute a voluntary Cost Recovery Program to offset a

portion of the costs borne by certain participating organizations. Organizations eligible for the Cost Recovery Program include local and regional non-governmental agencies (civic or business entities), local and regional interested individuals, and representatives of Native American groups. Cost recovery will be based on in-person meeting attendance (not teleconference attendance), and will apply to any formal meetings associated with the UARP alternative licensing process, including Plenary Group meetings, Technical Working Group meetings, and meetings of subgroups established within any of these groups. Only one representative of an organization will be eligible for the program per meeting. Eligible organizations must demonstrate a good faith effort to participate in the alternative licensing process, demonstrating a sustained presence in either Plenary Group or Technical Working Group meetings. Organizations that participate in less than 50% of the scheduled meetings (in person or by teleconference) will be considered ineligible. If an organization attends 50% of the scheduled meetings of the group it is primarily interested in (Plenary or a Technical Working Group), that organization will be eligible for the Cost Recovery Program for all meetings attended.

The Cost Recovery Program has been designed to offset the cost of travel expenses to meetings, and as such, will be based on one-way distance between the eligible Participant's home/office and the meeting location. Participants who travel between 25-60 miles one-way to a meeting will be eligible to recover \$35 for the meeting, while Participants traveling more than 60 miles one-way will recover \$70 per meeting. Eligible organizations will submit to SMUD summaries of travel distances to meetings on a quarterly basis. SMUD will cap total payments to the program at \$10,000 per year, and will evaluate the effectiveness of the program on an on-going basis, reserving the right to terminate the program at any time.

3.8 Third-Party Facilitator

A third-party facilitator will be used to conduct Plenary Group meetings. Technical Working Groups may also choose to use the third-party facilitator. The third-party facilitator will ensure that all group Participants have an opportunity to be heard, that the meetings are productive and efficient, and that meeting summaries are prepared. The third-party facilitator will be selected and paid for by SMUD. However, the third-party facilitator will seek to further the interests of all Participants, not just the interests of SMUD.

3.9 Decision-Making

A variety of decisions will be made by the Plenary and Technical Working Groups throughout the relicensing process. As stated in Section II of this document, the goal of the ALP process is to reach consensus on PM&E measures that will serve as a basis for license conditions, including a comprehensive agreement regarding recommended PM&E measures. Hence, the decision-making process must be one that allows all participants to voice opinions, create alternatives, and reach a level of comfort with the ultimate decision. Participants will seek agreement on issues to address, study methodologies, appropriate PM&E measures, and other issues.

Requesting a decision. Any participant in the relicensing process, including the facilitator, may request that a decision be made on a particular topic. Prior to commencing a

discussion about the decision, all participants will acknowledge they clearly understand the implications of the decision. Not all Plenary or Technical Work Group participants will be at meetings when decisions are made. Those participants present at a given meeting may elect to postpone a decision if it is felt that certain participants who have a vested interest in the decision are not present or if more information needs to be reviewed prior to making the decision. However, once participants in a Plenary Group or Technical Work Group meeting have made a decision, requests by non-attendees at a later date to revisit the decision will be granted only in circumstances where the non-attendees can show their interests were not adequately represented at the time of decision-making (see Section 3.5 - Late Participation).

Decision-making standard. The participants agree that the primary basis for decision-making will be sound science, which involves rigorous analysis of natural resource field data and information related to social issues, such as public safety and power generation. The Plenary and Technical Working Groups will utilize these sources of information for effective decision-making and for balancing environmental, economic and social needs, consistent with applicable law, related to the project. All available information that is pertinent to a given decision (e.g., study plans, draft documents) will be made available and reviewed by the participants prior to making a decision. If required, special technical workshops may be held prior to decision making to educate participants regarding the technical details of the information upon which a given decision is to be based. In these circumstances, and in the general discussion of technical issues before a non-technical group (e.g., the Plenary Group), technical experts will strive to express themselves in layman's terms so that all can understand the issues.

Decisions will be made by *consensus* among the Participants at any scheduled Plenary Group or TWG meeting. Consensus means that all Participants to a given decision can "live with" the decision. Participants may be asked to live with a decision that is not their preferred ideal but is fair considering the many participating interests. Consensus does not mean that Participants get everything they want. In reaching consensus, all Participants must express an opinion. Silence will not be construed as endorsement. Participants who are in the minority on a given decision point will have an opportunity to explain their different point of view by: (1) adding to the body of information already presented, (2) articulating specific concerns, or (3) presenting possible alternatives and supporting arguments.

All decision-making discussions, including minority points of view, will be recorded during the meeting, reflected in meeting summaries, and, as such, ultimately memorialized in the Public Review File of the relicensing process.

Effect of Decisions. Absent specific language to the contrary, the decisions and/or agreements reached by the Plenary Group or TWG Participants are not intended to create contractual obligations. However, the success of this relicensing depends on all Participants acting in good faith, and it is expected that when a Participant indicates agreement to a decision, the other Participants can rely on that Participant to support such decision within its own organization and throughout the licensing process.

If a representative of a participating organization does not have the authority to bind the organization, the representative will keep its organization apprised of the activities of the Plenary

Group and the TWGs, the issues being addressed, and the alternatives being considered. The representative will seek guidance from the participating organization decision-making authorities with regard to the activities, issues, and alternatives and will convey that information to the other Participants on a regular basis.

3.10 Dispute Resolution

Each Participant in the Plenary Group and TWGs will make a good faith attempt to reach agreement on all issues, as described in Section 3.9 -Decision-Making. If consensus regarding a particular issue is not achieved after reasonable efforts, the issue will be considered to be in dispute. Where a TWG has an issue in dispute, the dispute will be referred to the Plenary Group. Where the Plenary Group has an issue in dispute, initial attempts at resolution will occur through an Internal Focus Group (IFG) that will meet separately, with the facilitator if needed. As internal focus groups are formed to resolve a disputed issue, they will first prepare a plan and schedule for their deliberations. The schedule will include a deadline for resolving the disputed issue. Upon resolution of the disputed issue, the IFG will present a recommendation to the Plenary Group. The Plenary Group will evaluate the recommended resolution and determine its adequacy.

If the IFG does not resolve the disputed issue by the self-imposed deadline, the Plenary Group may: 1) extend the IFG review period up to 30 days, 2) arrange for a FERC facilitator/mediator or a third-party facilitator/mediator, if the Participants determine that such action would help resolve the dispute, or 3) declare the issue as unresolved. If disputes on PM&E measures are not resolved by the time SMUD is required to submit its license application to FERC, the preliminary draft EA prepared by SMUD will present the disputed PM&E measures in the form of alternative measures.

4.0 SCHEDULE

To ensure that the statutory and regulatory deadlines for relicensing the UARP are met, and to ensure that the relicensing process is efficient and cost-effective for all Participants, the Plenary Group developed a procedural schedule, which appears as Appendix B. All Participants face constraints on the amount of time, money, and personnel that they can commit to the alternative licensing process, and those constraints can make it difficult to meet certain deadlines. Therefore, the schedule includes as much time as is reasonably possible for each of the steps of the alternative process, but it should be recognized that delays by any one Participant can impose a serious burden on all the other Participants.

For the alternative licensing process to work, Participants must commit to the schedule and make best efforts to ensure that the process progresses efficiently and effectively. Without clear deadlines, the Participants risk becoming bogged down in a costly and unproductive process. However, Participants should also keep in mind that the goal of the alternative licensing is to produce a comprehensive and accurate preliminary draft EA and a mutually acceptable final license application, not merely satisfy a series of deadlines. Therefore, all Participants are encouraged to be as flexible as reasonably possible in enforcing the schedule.

SMUD, FERC, resource agencies, Native American tribes, citizens' groups, businesses, other organizations, and members of the public will apply best efforts to meet the schedule. If a dispute arises as to whether any Participant should be required to meet a particular deadline in the schedule or whether a particular deadline should be extended, the Plenary Group will attempt to resolve the dispute (see Section 3.9 - Dispute Resolution).

5.0 COMMUNICATION PROCEDURES

5.1 Public Review File

The Public Review File constitutes the formal written record of the alternative licensing process. The Public Review File will include copies of written correspondence, transcripts of public meetings, summaries of all Plenary Group and TWG meetings, study plans and reports, status reports, contact logs, and other documents submitted for inclusion in the formal record. The public review file will contain final versions of all agreements and decisions reached by the Plenary Group, thereby ensuring all such material will be transmitted to FERC. The Public Review File will be made available at the following locations for public review:

1. In electronic format, at SMUD's Hydro Relicensing web page, accessible through www.smud.org/relicensing/html,
2. In paper format, at SMUD's Customer Service Center, located at Highway 50 and 65th Street in Sacramento, California, and
3. At FERC's public reference room, located at 888 First Street, NE, Washington, D.C., 20426. In addition, most of the material in the Public Review File will eventually be available through FERC's Records Information Management System, accessible on the Internet through www.ferc.fed.us/online/rims.htm/ after SMUD files the license application.

Copies of material in the Public Review File may be obtained at these locations.

5.2 Submissions to the Public Review File

Any interested party may submit comments and other materials to SMUD and FERC for inclusion in the Public Review File. All written and electronic communications that an interested party would like to include in the Public Review File for the UARP relicensing must be sent to both SMUD and FERC. Material to be included in the Public Review File should be sent in paper format to FERC at the following address:

Linwood A. Watson, Jr.
Acting Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

In addition, material to be included in the Public Review File should be sent to SMUD in either electronic format or paper format at one of the following addresses:

Electronically: e-mail to hydrorelicensing@smud.org or computer disk sent in the mail (see below)

By U.S. Mail: David Hanson, Project Manager
Sacramento Municipal Utility District
P.O. Box 15830, Mail Stop A352
Sacramento CA 95852-1830

All material submitted for inclusion in the formal record must clearly display the following information on the first page: **Upper American River Project, Project No. 2101.**

Participants should provide all material in electronic format, to the extent reasonably possible, to allow the material to be posted promptly on SMUD's Hydro Relicensing web site. Material may be submitted in both electronic and paper format, if appropriate.

5.3 Mailing List

The relicensing process for the UARP is open to everyone who is interested. It is hoped that resource agencies, Native American tribes, citizens' groups, other organizations, businesses and members of the public will all participate actively in the relicensing process.

SMUD will maintain a mailing list to identify all parties who are interested in the relicensing process. The list will include all interested parties that:

- Ask to be placed on the list by sending a written request to SMUD;
- Provide mailing information on a sign-in sheet at a public information meeting hosted by SMUD; or
- Express an interest in the relicensing process by submitting comments or material to SMUD or FERC.

The mailing list will be used to provide notice of meetings and notice that information or documents are available for public review. Notices of public information meetings and workshops, and notice that information or documents are available in the Public Review File and elsewhere (e.g., libraries) will be distributed to everyone on the mailing list. Notices of Plenary Group meetings and of Technical Working Group meetings will be distributed to Participants in the respective group.

SMUD will also prepare a quarterly newsletter that will be distributed to the entire mailing list throughout the duration of the process. The purpose of the newsletter will be to provide periodic updates on major activities and upcoming events associated with the UARP alternative relicensing process.

Notices and relicensing materials will be distributed primarily through e-mail and SMUD’s Hydro Relicensing web page; however, interested parties who do not have e-mail addresses or access to the Internet may specifically ask to receive notices through the mail.

The mailing list will be posted on the Hydro Relicensing web page. It will include the mailing address, telephone number, fax number, and e-mail address of each interested party.

5.4 General Approach to Communication

Consistent with federal and state paper-reduction policies, and to ensure broad public access to relicensing materials, SMUD plans to distribute most written relicensing material in electronic format and to make this material available through SMUD’s Internet site, www.smud.org/relicensing/html, under the heading “Hydro Relicensing”. SMUD and the Participants will use the following procedures to distribute relicensing material, as appropriate:

<u>Document</u>	<u>Primary Distribution</u>	<u>By Request</u>
Meeting notices	web page and e-mail	paper copy
Meeting summaries	web page and e-mail notice	paper copy
Major documents and data	web page or computer disk	paper copy
Correspondence:		
From SMUD	web page and e-mail	paper copy
From other Participants	e-mail or computer disk	paper copy
Status reports	web page and e-mail notice	paper copy
Special notices	e-mail	paper copy
Newsletter	U.S. mail	Web site

5.5 Public Information Meetings

SMUD will host periodic public information meetings or workshops to solicit input from all interested stakeholders and the public throughout the relicensing process. Public information meetings may be transcribed, at SMUD’s discretion. If the meeting is transcribed, SMUD will include the transcript in the Public Review File. If the meeting is not transcribed, SMUD will prepare a meeting summary and include that summary in the Public Review File.

SMUD will provide written notice at least one week in advance of each public meeting to all entities on the mailing list. Notice of the meeting will include a proposed agenda. In addition, SMUD may also publish a separate notice in newspapers of local or regional circulation at least five days in advance of public information meetings.

Participants will fully consider all comments offered during public information meetings.

5.6 Plenary Group Meetings and TWG Meetings

To ensure consistent communication with and among Participants, SMUD will distribute a draft agenda one week prior to each scheduled Plenary Group meeting (including teleconferences), based on input of the Participants. The agenda items for upcoming Plenary Group meetings will be developed, in part, using the meetings summaries of previous meetings prepared by the third-party facilitator. Participants may submit proposed changes in writing to SMUD within five days of receipt of the draft agenda. The agendas will be posted on the website. Any written materials to be discussed at an upcoming Plenary Group meeting will be distributed by the responsible Participants at least three days prior to the meeting.

The meeting planning deadlines described above for the Plenary Group will apply to the TWGs unless independent deadlines are established by the different TWGs.

Meetings will be documented by summarizing key decisions and action items. The meeting summaries will be prepared by the third-party facilitator; SMUD will post and distribute the summaries of Plenary Group and Technical Working Group meetings to meeting Participants within one week after the meeting. SMUD will review any timely changes proposed by Participants and revise the meeting summary as appropriate. A revised summary will be distributed to the meeting Participants at least one week prior to the next scheduled meeting, if practicable. Final meeting summaries will be included in the Public Review File.

Other than verbal communications at meetings, e-mail will be used as the primary means of communication between the Plenary Group or TWG Participants. The initiator of any such e-mail will distribute the e-mail to all Plenary Group or TWG Participants, as applicable.

5.7 Ground Rules for Plenary Group and TWG Meetings

During group meetings, each attendee is expected to abide by the following ground rules:

- Be solution-oriented.
- Participate.
- Speak one at a time.
- Be concise.
- Use “I” statements when expressing opinions.
- Express concerns and interests (not positions).
- Focus on issues not personalities.
- Focus on what CAN be changed (rather than what cannot be changed).
- Listen to understand (not to formulate a response for the win!).
- Draw on the experience of others.

- Respect others, including the expressed interests of others.
- Be prepared for each meeting (read preparatory material prior to meeting attendance).
- Commit to the success of the process.
- View disagreements as challenges to be solved rather than battles to win.
- Communicate interests and roles clearly and early in the process.
- Act in good faith, recognizing the interests of others in reaching compromise.
- Leave “baggage” at the door.
- Not hold back issues or concerns for perceived strategic advantage.
- Discuss history only as it contributes to solutions.

During facilitated meetings, the following assumptions will be made by the facilitator:

- Managed conflict is good and stimulates creativity & innovation.
- Consensus-based decisions produce more effective solutions than autocratic decisions.
- The group has the solutions to address identified issues.
- Participants are doing the best they can with the knowledge they have now.
- Blame is unproductive and not empowering.

Attendees who exhibit disruptive behavior at a meeting (such as consistently speaking out of turn, yelling, etc.) will be asked by the facilitator to cease the behavior. If the attendee does not cease the behavior and continues to disrupt the meeting, the facilitator is empowered to ask the attendee to leave the meeting. If there are several attendees exhibiting disruptive behavior and meeting progress has halted, the facilitator may decide to end the meeting.

5.8 “Single Text” Approach to Production of Decisional Documents

Participants in Plenary and Technical Working Groups will use a “single text” approach for development of important, decision-based documents such as communication protocols, study plans and comprehensive agreements. The use of a single text approach will greatly enhance the ability of Participants to develop documents while communicating via teleconference and/or e-mail. This approach will also eliminate the confusion that often arises when multiple versions of a single document are at play within a large working group.

All comments by the Participants on a given document under consideration in or among the Plenary and/or Technical Working Groups will be made on the actual document in question (whether paper or electronic), such that the comments can easily be understood, shared and integrated into a revised (iterative) text. Alternatively, a group may elect to jointly edit a document during a meeting, with all Participants offering comments during the session.

SMUD will maintain a cumulative record of the decisions reached on a given document in order to help Participants move forward through the iterative process. This will be of particular value in developing the comprehensive agreement. By maintaining a cumulative record of decisions and changes to the document, all Participants will be able to understand and review the series of comments, decisions, and agreements behind the final comprehensive agreement. SMUD will maintain the cumulative record in a “single text” and will provide the

latest version to Participants. Once all comments are incorporated into the final text of the document, it will be posted on the SMUD website and entered into the Public Review File.

The procedure for editing of a single text document will be managed by SMUD. The procedure will be performed primarily within word processing software. The procedure will be flexible enough to accommodate Participants who do not share the same word processing software as SMUD, or who do not have a computer or e-mail access. The steps in the document development process are described below. As the process will be an iterative one, several versions of the document will be produced throughout the process, beginning with the initial document.

Production of Initial Document: An initial document will be provided to Participants for review, editing and comment. The document will be a MS Word 2000 document, and formatted as follows:

- The document file name will reflect the subject matter (e.g., “UARP Protocols” for communication protocols related to the UARP relicensing).
- The initial document file name will be identified by “v1” to designate version 1 of the document (e.g., UARP Protocols v1), and subsequent versions of the document will be designated accordingly.
- The font will be Times New Roman, 12 point.
- A header will indicate that the document is Draft.
- A footer will be in Times New Roman, 10 point, and will contain: (1) the name/version of the document (autotext), (2) the date, and (3) the identifier of Upper American River Project (FERC No. 2101).

Editing the Initial and Subsequent Versions of the Document:

- The initial document (or subsequent versions of it) will be distributed by SMUD electronically (via e-mail) or as a hardcopy (via regular mail). The standard software to be used for electronic transmittal of the document will be MS Word 2000, although Participants requesting WordPerfect 6.0 will be accommodated.
- Participants will edit the text in MS Word 2000 using deletion (strikeout) and addition (underline) features inherent in the software (i.e., menu/tools/track changes/highlight changes). Participants utilizing WordPerfect will print out the document and edit the hardcopy manually as will Participants who receive hardcopy printouts in the mail.
- To comment (not edit) on an aspect of the text, Participants will use bold brackets [] and “**bold**” text.

- When *e-mailing* the edited version back to SMUD, Participants will clearly indicate in the filename of the attached file the document version and the editing Participant (e.g., UARP Protocols v1 USFS). Participants will also copy all other Participants with their edits to aid in their review and editing of the document.
- Participants utilizing WordPerfect or hard copy will send comments to SMUD via facsimile or U.S. Mail. To avoid overburdening these parties, they will not be required to distribute their comments to all other parties. Rather, their comments will be identified in the revised document.

Creating a New Version of the Document: After the individually edited documents have been received, SMUD will combine the edits and comments in a single text for re-distribution. The following conventions will be used:

- The file name will be changed to reflect the new version (e.g., v2).
- The Footer will reflect a new date.
- All edits (deletions, additions) will be reflected in the document followed by the name of the Participant responsible for them.
- When edits conflict, SMUD will attempt to present the alternatives in sequence.
- Simple grammatical, spelling, or format revisions will not be highlighted in the subsequent version to enhance readability.
- For comments, footnotes will be used. A number will follow the section in question and will correlate with a number at the bottom of the page. In the footnote, the Participant's last name will be indicated followed by the comment. General comments will be presented as "end notes" at the back of the text.
- Participants will receive a copy of the text reflecting all comments and edits for discussion/reconciliation/negotiation.
- For each version and round of reconciliation, SMUD will provide Participants with a text reflecting only currently outstanding edits and comments.
- During the course of text-based discussions/negotiations, points of agreement will be documented by use of footnotes.

By comparing any given version of the text to the original v1 document using MS Word "Compare Documents", a text showing the record of editing can be produced for the record and/or for reference.

5.9 Informal Communications and Communications between Interested Parties

Participants are free to communicate informally with other Participants. Participants are encouraged to share relevant communications amongst all Plenary Group or Technical Working Group Participants, as appropriate. Any participant may call for a caucus at any time during any Plenary or Technical Group meeting.

5.10 Media

SMUD staff will be the primary point of media (television, radio, or newsprint) contact for the Plenary Group and the Technical Working Groups. Participants may communicate with the media, but no Participant will speak on behalf of another Participant without that Participant's consent. Participants will make a reasonable effort to promptly inform SMUD and the other Participants of relevant communications with the media.

Participants will not seek out or use the media as a means to advance their views on an issue that the Plenary Group is working toward or has achieved consensus on. In keeping with the good faith commitment made by the Participants, differences of opinion will be discussed within Plenary or Technical Working Group meetings. Generally, interests and views expressed within the alternative relicensing process should not be attributed to individuals or their institutions in other forums or through the media. Violation of this rule will be raised and addressed through the Plenary Group.

5.11 Confidentiality

The Plenary Group and TWG meetings are open to the public and involve information available to the public as required by the Public Records Act (California Gov. Code section 6250 et seq.) or other applicable law. Some information developed during the alternative relicensing process may be confidential under California or applicable law. An example is information on Native American graves, cemeteries, and sacred places. It is the responsibility of a Participant providing confidential information under applicable law to identify the information as confidential in advance of disclosure and inform the group. Participants may be requested to sign a confidentiality agreement prior to receiving confidential information. All Participants will abide by such an oral or written confidentiality agreement to the extent permitted by applicable state and Federal law.

When Participants are ready to undertake negotiations in separate settlement discussions in order to seek agreement on PM&E measures, they will first consider and decide how best to assure the confidentiality of settlement offers and negotiating positions. At that time, they will amend the Communications and Process Protocols as appropriate or enter into a separate protocol agreement in order to, among other things, protect the confidentiality of negotiating positions and settlement offers.

5.12 Communications with FERC

The FERC ex parte rule (18 CFR 385.2201) does not apply to communications in the pre-filing phases of a relicensing process that follows the alternative licensing procedures. Thus, any interested party may communicate with FERC, verbally or in writing, without prior notice to

other interested parties, prior to the time that the final license application is filed with FERC. FERC's involvement in the UARP relicensing process will be actively encouraged by SMUD and other Participants to ensure the process proceeds in accordance with FERC policy and regulations related to NEPA.

FERC staff may participate in any of the formal meetings associated with the UARP relicensing ALP process, either in person or by teleconference. FERC may also participate in smaller meetings of relicensing participants without prior written notice to SMUD or other Participants, provided that the involved Participants share relevant communications among all Participants, as appropriate.

5.13 Duration and Amendment of Communication Procedures

The communication and process protocols described in this document will become effective when adopted by the Plenary Group. The final Communication and Process Protocols, as they may be amended from time to time by the Plenary Group, will remain in effect until FERC notifies SMUD that the preliminary draft EA and final license application have been accepted for filing. If amended, the new protocols will be documented and added to the formal record of the UARP relicensing. Amendments by the Plenary Group will not necessitate new acknowledgement signatures by Participants.

5.14 Economic Information

If SMUD asserts that a proposed individual study, action, PM&E measure or the full set of PM&E measures is unacceptable, then SMUD will present information upon which that assertion is made. The information presented by SMUD may include operational flexibility, economical generation, project peaking capacity, safety, and system reliability. This may include economic information such as differences in time-of-day and time-of-year power prices. Nothing in this section requires SMUD to reveal proprietary information consistent with the limitations of the California Public Records Act or other applicable laws.

5.15 Ending the ALP

The ALP may be discontinued upon consensus of the Participants that progress toward settlement has halted and key Participants are no longer willing to commit to the process. The departure of one or more participants will not discontinue the ALP unless SMUD and/or the remaining participants choose to end the ALP. SMUD shall have the right to discontinue the ALP at any time. Prior to SMUD exercising this right to discontinue the ALP, SMUD agrees to explain to the group at a Plenary Group meeting its reasons for withdrawing and to give the group 60 days notice of its intention to write to FERC and formally end the ALP process. This time is necessary for the participants to prepare to enter into a traditional licensing process and the deadlines associated with that process.

5.16 Rights in Other Forums

Participation in the UARP alternative licensing process does not limit the rights of any organization or individual. Participants will make good faith efforts towards the success of this ALP. However, if litigation or other action outside this alternative licensing process is initiated, participants will make a good faith effort to notify other participants as early as possible. This section is inapplicable to any investigation or enforcement action initiated by any participant pursuant to applicable law.

Appendix A – Plenary Group Participants (as of December 2001)

- American River Recreation Association & Camp Lotus
- California Department of Fish and Game
- California Outdoors
- California Sportfishing Protection Alliance
- California State Water Resources Control Board
- City of Sacramento
- Mr. Bill Demerritt
- El Dorado County Citizens for Water
- El Dorado County Water Agency
- El Dorado Irrigation District
- Federal Energy Regulatory Commission
- Friends of El Dorado County
- Friends of the River
- Georgetown Divide Public Utility District
- Pacific Gas and Electric Company
- Placer County Water Agency
- Raft Photo
- Sacramento Municipal Utility District
- Taxpayers Association of El Dorado County
- The Center for Sierra Nevada Conservation
- U.S.D.I. Bureau of Land Management
- U.S.D.A. Forest Service
- U.S.D.I. National Park Service

Appendix B – Procedural Schedule

Activity	Date
	2001
Public Workshops to Describe Project and Relicensing Process	May
Form Plenary Group and Refine Communications Protocol and Ground Rules	June
Two-day Project Site Visit	June
Issue Initial Information Package	July
Public Information Meetings to Discuss Issues	July
Plenary Group Meetings to Identify Issues, Goals, and Desired Conditions	July-August
Form Technical Working Groups	September
Identify and Prepare Plans for 2002 Studies	September – December
Public Meetings to Discuss Study Plans	December
	2002
Identify and Prepare Plans 2002 Studies (continued)	January – April
Public Meetings to Discuss Study Plans	March
Perform Technical Studies	May – September
Notice of Intent	June
Review Results of 2002 Studies and Produce Reports	October – December
	2003
Study Request Due	January
Identify and Prepare Plans for 2003 Studies	January – April
Perform Technical Studies	May – September
Scoping Document 1	June
NEPA/CEQA Scoping Meeting	July
Scoping Document 2	October
Review Results of 2003 Studies and Produce Reports	October – December
Begin Discussions of Protection, Mitigation, and Enhancement (PM&E) Measures	June
	2004
Submit Draft Mandatory Conditions Pursuant to 4(e), Draft Fishway Prescriptions Pursuant to Section 18, and Draft Recommendations Pursuant to 10 (a)	To be determined
Perform Technical Studies	May-September
Conclude discussions of PM&E measures with Comprehensive Agreement	July
Complete and circulate Draft License Application with Preliminary Draft Environmental Assessment	September
	2005
Submit Comments on Draft License Application	January
Finalize CEQA document	To be determined
File application with SWRCB for 401 certification of the license application	Two days before filing of application letter date
Submit Final License Application to FERC; give notice of submittal to mailing list	July

ACKNOWLEDGEMENT

On behalf of the individual, agency, non-governmental organization, or other entity listed below, I acknowledge that I have read and understand the foregoing “Communications and Process Protocols for the Upper American River Project Alternative Licensing Process (FERC Project 2101)” (Protocols). While the Protocols is not a contract it does establish the standards of good faith participation agreed upon by the Participants. Therefore, the individual or entity listed below agrees with the contents of the Protocols and represents that its participation in the UARP Alternative Licensing Process will be in good faith and in accordance with the Protocols.

I represent that I am authorized to sign this Acknowledgement on behalf of the individual agency, non-governmental organization, or other entity listed below.

Organization/Agency: _____

By: _____ Date: _____

Print: _____

Title: _____