

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

SOUTHERN CALIFORNIA EDISON)
)
) DOCKET NO. P-1930-088

COMMENT OF KERN RIVER BOATERS IN
OPPOSITION TO SCE’S APPLICATION FOR
EXEMPTION FROM FORM 80 FILING
REQUIREMENTS ON KERN RIVER NO. 1

1. Introduction.

Kern River Boaters is a non-governmental organization that advocates the interests of recreational whitewater boaters in the Kern River drainage. Its membership recreates on the bypassed reach of Southern California Edison’s [“SCE”] Kern River No. 1 hydroproject [“KR1”].

SCE has applied for exemption from FERC Form 80 filing on KR1 on the basis of “lack of project-associated recreation use.”¹ SCE purports that a 2005 Recreation Use Monitoring report found “no suitable recreation opportunities exist at the Project.” (*Ibid.*) SCE admits it funded an access trail to the dewatered river as part of its Article 411 obligations, but avers the trail “is not project-related, nor within Project boundaries.” (*Id.*, at p. 2.) SCE concludes that KR1 is “run-of-river, thus there are no project-induced opportunities where recreation facilities could exist.” (*Ibid.*)

¹ FERC SUBMISSION 20140930-5349, at p. 1 [“Application”]

Kern River Boaters believes SCE misunderstands the conclusions of the 2005 recreation report, takes an unreasonably narrow view of the purpose of Form 80 reporting, and is inadequately familiar with current recreational activities occurring on KR1's bypassed reach.

2. Boating on the Bypassed Reach.

For whitewater boaters, the stretch of Kern River dewatered by the KR1 hydroproject is comprised of four runnable sections. (1) Below Democrat Dam starts the Class 5 "Cadillacs" run. (2) Just before the "Shark Fin" rapid starts the Class 4/5 "Lucas Creek" run. (3) At the confluence with Lucas Creek starts the Class 3 "Richbar" run. (4) After Nude Beach starts the Class 5 "Cataracts" run.

The Article 411 trail identified by SCE in its application is used as the put-in for the Class 3 Richbar run and as a portage around the Class 5+ Lucas Creek rapid for boaters who put in upstream. Although the stretch dewatered by KR1 has mistakenly been thought suitable only for expert boaters due to the striking roadside scenes of the Cadillacs and Cataracts sections, that thought is changing as the boating community becomes more aware of the Lucas Creek and Richbar sections in between. For instance, the Richbar run offers about three-and-a-half miles of Class 3 whitewater, and that rises to about five miles of Class 3 & 4 when added to the adjoining Lucas Creek run. Moreover, due to the channelized nature of the rapids in this section, quality whitewater boating can be achieved with relatively lower flows than on other sections of the Kern River.

3. SCE Misunderstands the 2005 Recreation Report.

SCE asserts the 2005 Report found "no suitable recreation opportunities exist at the Project." (Request at p. 1.) A blanket "no suitable recreation" finding — whether, "at the project" or in its bypassed reach — is simply not to be found in the report. The report found over 85,000 annual visitors to the project reach

engaging in a range of recreational activities. (Report at pp. 1-2².) The report identified the existence of four developed day use areas along the reach and the aforementioned access trail at Lucas Creek. (*Id.*, at p. 1.) The report noted that “SCE recently upgraded the[se] recreation facilities along the KR1 project reach.” (*Id.*, at p. 5.) Suitable recreational opportunities plainly exist within the project reach.

It is true the report did not recommend monitoring of or modifications to the Project’s existing operations. (*Id.*, at p. 3.) But the report made that recommendation on the basis of the data that existed at the time it was written. As the report allowed, “Future demands for river recreation *may change over time as conditions that affect this demand change*, including river access, information available about the lower Kern River (e.g., flow information), *demographics*, user preferences, and the availability of substitute recreation resources.” (*Id.*, at p. 7 (italics added).)

The report sought to determine whether SCE’s then-new license was sufficient for recreation. It found it was. The report did *not* purport to determine whether the license’s recreational provisions would be always be sufficient, nor did it determine that SCE should be exempt from the reporting requirements of Form 80 going forward.

4. SCE’s Narrow View of Form 80.

SCE argues it should be exempt from Form 80 because the KR1 project is “run-of-river, thus there are no project-induced opportunities where recreation facilities could exist.” (Application at p. 2.) SCE avers that the Article 411 Lucas Creek trail it funded “is not project-related, nor within Project boundaries.” (*Id.*, at p. 2.) SCE thus appears to take the view that unless recreation takes place strictly

² FERC SUBMISSION 20051228-0011 [“Report”].

within the four corners of the project's land boundaries, it should not fall under the purview of Form 80.

Assuming for a moment that SCE's view is correct, SCE has not proven there to be no potential use in the future, for example, for river access or other improvements below or around Democrat Dam, or at the KR1 Powerhouse, both of which lies squarely within the four corners of the project's land boundaries.

But SCE's view of Form 80 is unreasonably narrow. Although SCE attempts in its application to distance itself from the recreational developments in the bypassed reach of its project, SCE was *mandated in its license* to fund recreational developments along that reach and, in fact, has completed improvements in four day use areas and one river access trail. (License at Articles 409 & 411 & USFS 4(e) Condition No. 5.) These are project-mandated developments abutting project waters and are ripe for Form 80 reporting to assist the Commission in its regulatory work. SCE is simply wrong when it tells this Commission the Lucas Creek trail "is not project-related." SCE is also wrong when it asserts to this Commission there are no "project-induced opportunities for recreation." SCE need only look to its license and the developments it funded along the project waters for correction.

Furthermore, the regulation providing for Form 80 accountability is entitled: "Information respecting use and development of public recreational opportunities." (18 C.F.R § 8.11.) That series of regulations is interested in monitoring and promoting recreation on both "project lands *and waters*." (18 C.F.R § 8.1 (italics added).)

The KR1 license unmistakably denotes the stretch of river dewatered by the KR1 hydroproject as "project waters," and it confers upon SCE the obligation to protect those waters for the public good — including the recreational use of those waters. (See License at pp. 14, 37-39, 44, 58, 63, 66.³) The mere existence of the

³ FERC ISSUANCE 19980617-0277 ["License"].

KR1 hydroproject, which dewater its river reach by about 400 cfs, has an undeniable effect upon recreation on its project waters.

The fundamental purpose of Form 80 is to provide the Commission information upon which it can determine whether its projects “are meeting the public’s recreational needs” — both presently and in the future.⁴ (FERC Compliance Handbook at § 13.3.1.) SCE has not shown there to be inadequate recreation on project lands, project-mandated recreation developments, and project waters to excuse itself from its Form 80 obligations.

⁴ As Co-coordinator of FERC’s 2009 Form 80 reporting cycle Shana C. High explained:

The Form 80 is used to gather information for use by the commission and other federal and state agencies to determine what recreational facilities are located at licensed projects, and to examine whether public recreational needs are being accommodated and where additional efforts may be needed to meet future needs.

We use the information to assess visitation levels and recreational facility capacity levels to determine whether the facilities are sufficient to accommodate the demand for them or whether the number or scope of facilities at a project should be modified — especially if stakeholders have requested changes to the recreation plans for the project. We also may use the data as a tool for evaluating recreational use trends regionally and throughout the U.S.

The Form 80 also provides a ready reference for environmental assessments and environmental impact statements, as well as background information during environmental compliance inspections by FERC staff. During our environmental inspections, we use the Form 80 data to verify the information provided and to assess license compliance.

5. Whitewater Recreation in the Dewatered Stretch Today.

As the recreation report allows, times change. (Report, at p. 7.) Interest in boating the dewatered stretch of the KR1 hydroproject has increased over the last six years as new visitors and improved boaters take on the Class 5 sections and numerous intermediate boaters are introduced to the increasingly popular Class 3 and 4 sections. Improvements could definitely be made for river access above the Shark Fin rapid and at Nude Beach (the bookends of the easier runs in the bypassed reach) — and potentially at other areas in the reach. New boats and boating techniques are rendering instream flows acceptable to whitewater boaters that only swimmers and waders supported in the recreation report. And boater interest in this reach is increasing.

It is too early to close the book on KR1's potential for recreation. For these reasons, Kern River Boaters respectfully urges the Commission to deny SCE's request for exemption from Form 80 reporting on KR1.

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Respectfully submitted,

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