

FEDERAL ENERGY REGULATORY COMMISSION  
Washington, D. C. 20426

OFFICE OF ENERGY PROJECTS

FERC No. 2299 - 062  
Don Pedro Project  
Turlock Irrigation District  
Modesto Irrigation District

Larry Weis, General Manager  
Turlock Irrigation District  
P. O. Box 949  
Turlock, CA 95381

OCT 26 2007

Allen Short, General Manager  
Modesto Irrigation District  
P. O. Box 4060  
Modesto, CA 95352

Subject: Allegations Regarding Streamflows Under Article 37

Dear Messrs. Weis and Short:

You filed on September 20, 2007, a reply to our August 29, 2007, letter requesting your response to allegations made by the California Department of Fish and Game (CDFG). The CDFG alleged in a letter dated July 20, 2007, that you had not released the required volume of water for the 2007 spring pulse flows. It sought mitigation for lost salmon production in the Tuolumne River through the use of additional water to be released at a later date.

Article 37 requires you to maintain minimum streamflows in the Tuolumne River at La Grange bridge in accordance with a prescribed table and schedule. The flow regime includes a requirement for an Outmigration Pulse Flow, which is intended to induce juvenile Chinook salmon to move downstream and out of the Tuolumne River. The streamflow releases are based on the type of water year, which is determined by a forecast of the unimpaired run-off in the San Joaquin Basin.

The run-off forecast changes month to month as the year progresses, and in some years may not be finalized until August. Article 37 allows you adopt an alternative streamflow release schedule as may be agreed to by you, the CDFG, and the U. S. Fish and Wildlife Service (USFWS). If you and the agencies agree to a schedule different than that presented in Article 37, you are required to notify the Commission within 30 days of the agreement.

The Water Year runs from October 1 through September 30, but the Tuolumne River flow year runs from April 15 through April 14. This allows you to devise an annual flow regime based on water availability. You initiated discussions with the resource agencies about the 2007 Tuolumne River flows as early as January 2007, and continued to monitor the run-off forecasts.

You notified the resource agencies of your proposed Outmigration Pulse Flow and Summer Flow Schedule by letter dated April 18, 2007. You reported the San Joaquin Basin run-off forecast (90 per cent exceedence) was 1,773, 183 acre-feet (a-f), which resulted in 20,091 a-f available for the Outmigration Pulse Flow and a summer flow estimated to be in the 50 to 75 cubic feet per second range. An additional 2,473 a-f was added to the pulse flow through interpolation above the available basin index threshold. You reported you did not receive any comments on your proposed flow releases.

We have reviewed the information filed on this matter and find you provided the resource agencies with your proposed Outmigration Pulse Flow and Summer Flow Schedule in a timely fashion, and that the proposed releases complied with the requirements of Article 37. The CDFG and the USFWS were given sufficient opportunity, but did not comment on your proposals and you made the planned releases. We will not revisit the adequacy of the releases, given the nearly 3-month delay in the receipt of the CDFG comments. We will not consider your actions to have been in violation of the license, and we will not require any mitigation.

We expressed our concern about the process by which the Tuolumne River flows are determined in a July 2, 2007, letter. We believe this incident clearly demonstrates the process has some administrative problems. To ensure that the agencies are in agreement with any future flow schedules that differ from the flows prescribed by Article 37, you must obtain their concurrence and document it. This documentation can be in the form of a letter, an e-mail, or a telephone record.

You should file with the Commission within the 30-day period specified by Article 37, an original and seven copies of the proposed flow schedule, along with the documentation of the agencies' concurrences. Without such documentation,

you must adhere to the flows specified by Article 37. Please send the required documentation to:


Office of the Secretary  
Federal Energy Regulatory Commission  
888 First Street, Northeast  
Washington, D. C. 20426

A copy of your filing should be sent under separate cover to:

Mr. Philip Scordelis  
FERC, DHAC  
901 Market Street, Suite 350  
San Francisco, CA 94103

If you have any additional information or questions about these matters, contact Mr. Scordelis at (415) 369-3335.

Sincerely,

  
George Taylor, Chief  
Biological Resources Branch  
Division of Hydropower Administration  
and Compliance

cc:

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