



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
SOUTHWEST REGION
777 Sonoma Avenue, Room 325
Santa Rosa, California 95404-4731

April 13, 2012

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

Subject: Additional Information for Consideration by the Study Dispute Resolution Panel,
Don Pedro Hydroelectric Project (P-2299-075).

Dear Secretary:

The National Oceanic and Atmospheric Administration's National Marine Fisheries Service (NMFS) files herein additional information for consideration by the Study Dispute Resolution Panel, prior to the upcoming Technical Conference on April 17, 2012. The information pertaining to the La Grange Hydroelectric Project has previously been filed in the docket (UL11-1-000) for the Commission's jurisdiction review. NMFS believes this information will be relevant to the Commission's determination in this matter, and urges the Commission to render its decision in a timely manner, given its bearing on the study phases and other matters in the Don Pedro Project integrated licensing process (ILP).

NMFS believes the Dispute Resolution Panel will find the La Grange information relevant to the question of how "reasonably foreseeable" it is that anadromous fishes in the lower Tuolumne River might be passed beyond the La Grange Dam, to locations where they would more directly encounter the facilities and operations of the Don Pedro Project. NMFS is aware that the Commission's Scoping Document 2 established a temporal scope that "will look 30 to 50 years into the future, concentrating on the effect on the resources from reasonably foreseeable future actions."

With this letter, NMFS also repeats its request (first articulated in its filing of June 10, 2011) that Commission staff transfer to the Don Pedro Project ILP sub-docket (-075) the information filed in the sub-dockets (-053, -065) for the "Proceeding on Interim Conditions before an

Administrative Law Judge” that commenced in July 2009. NMFS believes the information from the Proceeding is highly relevant to the ILP for the Don Pedro Project. NMFS notes the Director of the Commission’s Office of Energy Projects (OEP) stated in a recent letter (February 22, 2012, dismissing Erin Strange as agency panelist), “we provided clarification that any previous involvement in the interim conditions proceeding would be disqualifying, because some of the same matters that were at issue in that proceeding continue to be at issue in the current study dispute for the Don Pedro Project.” [Underline emphasis added]. Thus, NMFS makes its request so the Dispute Resolution Panel can review matters at issue in the interim conditions proceeding – that are not yet resolved, over two years later, by a Commission order – and that bear on this ILP, its study phases, and the current Study Dispute.

Lastly, NMFS is filing herein the recent (March 2012) document, “A Guide to Understanding and Applying the Integrated Licensing Process Study Criteria” prepared by the Commission’s OEP. This document was cited in the OEP Director’s response (April 11, 2012) to the Dispute Resolution Panel, and thus the rationale it contains is at issue in the Study Dispute.

If you have questions regarding this filing, please contact Mr. Larry Thompson at (916) 930-3613.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Wantuck', with a stylized flourish at the end.

Richard L. Wantuck
Hydropower Program Supervisor
Habitat Conservation Division

Enclosures

cc: Steve Edmondson, NMFS, Santa Rosa, CA
Maria Rea, NMFS, Sacramento, CA
Service List P-2299

**UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION
ADDITIONAL INFORMATION FOR CONSIDERATION BY
THE DISPUTE RESOLUTION PANEL**

**Turlock Irrigation District
Modesto Irrigation District
Don Pedro Hydroelectric Project**

Project No. 2299-075

E-Filed Documents List

1. 20111018-5030 (26446621) --- National Marine Fisheries Service, RE: FERC Jurisdictional Review - La Grange Dam and Hydroelectric Facility, October 17, 2011.
2. 20111118-5171 (26573375) --- Conservation Groups' Comments on Modesto and Turlock Irrigation Districts' Proposed Study Plan for Don Pedro Project (P-2299).
3. 20111215-5253 (26712042) --- National Marine Fisheries Service, RE: Additional Clarification to FERC Jurisdictional Review - La Grange Dam and Hydroelectric Facility, December 14, 2011.
4. 20120105-5138 (26797896) --- Turlock Irrigation District's Response to December 14, 2011 Letter from the National Marine Fisheries Service Regarding the La Grange Project; Docket No. UL11-1-000, January 5, 2012.
5. 20120413-5048 (27147555) --- National Marine Fisheries Service, RE: Additional Information for the Commission's Use in its Jurisdictional Review, La Grange Hydroelectric Project, UL11-1-000, April 12, 2012.
6. A Guide to Understanding and Applying the Integrated Licensing Process Study Criteria, Federal Energy Regulatory Commission, Office of Energy Projects, March 2012.

Enclosure B

**UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION**

**Turlock Irrigation District
Modesto Irrigation District
Don Pedro Hydroelectric Project**

Project No. 2299-075

CERTIFICATE OF SERVICE

I hereby certify that a National Marine Fisheries Service letter containing additional information for consideration by the Study Dispute Resolution Panel has this day been electronically filed with the Federal Energy Regulatory Commission, electronically served on Parties indicating a willingness to receive electronic service, and served via deposit in U.S. mail upon each other person designated on the service list for P-2299 compiled by the Commission Secretary.

Dated at Sacramento, California, this this 13th day of April, 2012.

Name:

A handwritten signature in black ink, appearing to read "Larry Thompson", written over a horizontal line.

Larry Thompson
National Marine Fisheries Service
650 Capitol Mall, Suite 5-100
Sacramento, CA 95814
(916) 930-3613