



October 26, 2007

Ms. Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, D.C. 20426

Re: Response to recent comments on Don Pedro Project No. 2299 Fishery Study Plan

Dear Secretary Bose:

The Turlock Irrigation District and Modesto Irrigation District (Districts), licensees of the Don Pedro Project, file this response to (1) the National Marine Fisheries Service's (NMFS) letter dated September 18, 2007, (2) the Golden West Women Flyfishers (GWWF) letter dated September 24, 2007, and (3) California Department of Fish and Game (CDFG) letter dated October 3, 2007 supporting the NMFS submittal of additional comments on the Tuolumne River Fisheries Study Plan and related issues to the Federal Energy Regulatory Commission (Commission). This letter generally follows the sections identified in the NMFS letter and supplements responses previously filed by the Districts since submittal of our 2005 Ten Year Summary Report in March 2005, including those in our July 13, 2007 revised Study Plan filing with the Commission.

Listed Species

The Districts are not aware of information or actual data from NMFS supporting its statement that Central Valley spring-run Chinook salmon and green sturgeon "occur in the project area." Nor are we aware of any justification to consider these species relevant to the Don Pedro Project. As to evidence that steelhead might even be present, NMFS stated in a July 30, 2007 filing that steelhead "likely" occur in the Tuolumne River on the basis of just 11 upstream migrants detected during 4 1/2 months of monitoring at a counting weir on the Stanislaus River, not the Tuolumne River.

Severe Hydrology Impairment

The point here by NMFS is not clear and the cited numbers appear to be in error. Comparing an unimpaired "pre-project" average flow with a "post-project" actual flow average ending 13 years ago is puzzling given that unimpaired and actual flows are available for every year. A primary purpose of both the Districts' and the City and County of San Francisco's (CCSF) projects in the

watershed is storage and diversion, activities that have occurred for decades prior to completion of the current licensed Don Pedro Project in 1971. CCSF diversions first exceeded 100 thousand acre-feet (TAF) in 1955 and have increased since then (exceeding 200 TAF by 1967). The 1955-70 average Tuolumne River unimpaired flow was 1,876 TAF and the actual flow was 756 TAF (40% of unimpaired). Comparable numbers for the “post-project” period of 1971-2006 are 1,992 TAF and 773 TAF (39% of unimpaired), showing almost no overall difference between those two periods.

Fishery Status and Instream Flow

The cited Central Valley Project Improvement Act (CVPIA) production goals are arbitrary both as to the chosen 1967-91 “baseline” period applying to the Tuolumne River and to the doubling of those subjective numbers without regard to numerous factors such as spawning area or other habitat conditions, ocean environment, hydrology, etc. For example, the average run estimate for the five years (1962-66) preceding the CVPIA baseline period was 2,100 salmon, far less than 8,900 used in the baseline. The chosen baseline period spanned two high escapement periods (1967-72 and 1981-88) and one low escapement period (1973-80) on the Tuolumne and included eight estimates of greater than 10,000 salmon, a level exceeded only once since then. The baseline period also failed to consider the accuracy of those estimates, many of which were either generated with no mark-recapture methods or had very low recovery rates.

NMFS statement that production is diminished in recent years is selective and ignores that years with runs of less than 1,000 fish also occurred on the 1960’s, 1970’s, and 1990’s. There were no screw trap operations before 1995 so comparable smolt estimates in prior similar conditions are not available, thus its “all-time” low statement actually refers a very limited period of years. We refer to our September 20, 2007 letter and attachment to the Commission on the assertion regarding 2007 spring flow operation.

The Districts have consistently provided information to illustrate that numerous factors throughout the salmon life-history including tributary instream flow, affect the numbers in the runs and that these factors may differ over time, exerting variable cumulative effects on the runs which are comprised of several age classes. Much of the Central Valley salmon harvested in the ocean and the Central Valley salmon runs are produced by large hatcheries, primarily in the Sacramento Basin, and harvest management is related to Sacramento basin runs - there is no harvest management based on the status on San Joaquin salmon. NMFS cites a lower average spring export as explaining away Delta factors, but fails to point out that measured Delta survival for San Joaquin salmon in recent years, even flood years of 2005 and 2006 with San Joaquin River flows of 8,000-27,000 cfs, has been very low and is always lower than for Sacramento salmon. This has been despite the implementation of several specific measures designed to improve Delta survival of San Joaquin salmon smolts. NMFS also comments on redd superimposition. While superimposition is another factor that varies according to run size, habitat availability, and spawning distribution, we have not claimed it is a “primary cause of

decline.” It has continued to be mentioned primarily because the California Department of Fish and Game (CDFG) has at times denied it exists, despite being a demonstrated basic biological occurrence.

NMFS states they assume the population trend of steelhead is similar to salmon, which they described as “appreciably diminished.” While NMFS did not cite any recent evidence of anadromy in rainbow trout in the Tuolumne River, the Districts have documented and reported that the rainbow trout population actually seems to be appreciably larger since the 1996 FERC Order.

Recommendations for Fishery Studies

The NMFS studies appear to be primarily a justification for massive flow increases they have already concluded to recommend. We assert that has little to do about balancing “with other beneficial uses” given the magnitude of flow shown in its Table 1. NMFS flows are recommended without regard to actual hydrologic conditions. It is interesting to note that sustained high winter flows are not a typical feature of the natural hydrograph, yet NMFS states that flow duration is perhaps more important than magnitude. NMFS also does not address that major fish movement is typically associated with flow changes, rather than extended flow duration.

NMFS states they have provided evidence that “fry and smolt survival is highly dependent on relatively high flows that increase food resources by inundating floodplain habitats.” We believe that, in actuality, such “evidence” in its previous filings is primarily speculative and insufficient to justify its recommended flows, consisting mainly of preliminary trend analyses based on preliminary smolt production estimates over a nine-year period that only “suggest” extended high flows (>2,000 cfs) are needed to produce many smolts. Furthermore, its “high flow-floodplain inundation-increased food” premise for the Tuolumne River has not been demonstrated.

Not only does NMFS increase its previously recommended floodplain inundation flow from 2,000 cfs in its March 2007 comments to 3,000 cfs in its latest letter, NMFS also requests 4,000 cfs flows for 15 days to duplicate prior flood year conditions - there appears to be no limit to its reasons to recommend higher flows. The 4,000 cfs ostensibly would be for additional screw trap evaluations, accompanied by a total of 40,000 marked smolts in eight test groups, in coordination with CDFG to produce the test fish. We have previously identified that CDFG did not adhere to a prior agreement on use of a fish rearing facility near La Grange to produce Tuolumne River smolts and furthermore CDFG has not provided smolts they agreed to produce for the VAMP program as recently as last year. We also point out that CDFG released, unannounced, over 35,000 unmarked smolts this year in the Merced River. Some of those smolts could have been used for Tuolumne screw trap evaluations but they were not made available for that purpose.

Consequently, we have little faith in involvement with CDFG with regard to any program on fish rearing. We also believe that the specific request by NMFS is unjustified and suggest that such additional data can be obtained in the future under wet year conditions and if fish are made available.

The existing summer flow requirement ranges from 50-250 cfs and, as identified in the Ten Year Summary Report, a range of flow releases from about 75-300 cfs, including intermediate flows has already occurred and has been evaluated. The Districts' study plan includes ongoing summer trout evaluation and temperature monitoring so there is no need to provide the experimental flows. We have also identified ongoing efforts to develop facilities that would provide additional summer flow in the upper half of the river.

Tuolumne River Technical Advisory Committee (TRTAC)

The Districts have no control of other entities and their participation in the TRTAC is voluntary. Obviously the intended coordination function of the TRTAC is enhanced with increased attendance and participation by all interested parties. The GWWF provided comments after attending only a single TRTAC meeting. There have been some recent agency staff changes and other relocations that may have affected some usual participation. The US Fish and Wildlife Service was present at the September 2007 meeting. Meeting notes are taken and those summaries, along with agendas and handouts, are posted on the TRTAC website, in addition to being included in the District's annual Article 58 report to the Commission. We encourage continued participation of GWWF and all other parties with the TRTAC.

In closing, the revised and comprehensive study plan submitted by the Districts to the Commission in July, 2007 contains elements of several flow evaluations, as well as associated monitoring, which we believe will address these biological issues and others identified by Commission staff.

Sincerely,

MODESTO IRRIGATION DISTRICT



Walter P. Ward
Assistant General Manager
Water Operations
Modesto Irrigation District
P.O. Box 4060
Modesto, California 95352

TURLOCK IRRIGATION DISTRICT



Robert M. Nees
Assistant General Manager
Water Resources & Regulatory Affairs
Turlock Irrigation District
P.O. Box 949
Turlock, California 95381