

FEDERAL ENERGY REGULATORY COMMISSION**Office of Energy Projects**

Division of Hydropower Administration and Compliance
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August 18, 2011

Project No. 2299-072--California
Don Pedro Project
Turlock and Modesto Irrigation Districts

Mr. Robert Nees
Director of Water Resources
Turlock Irrigation District
333 East Canal Drive
P.O. Box 949
Turlock, CA 95381

Mr. Greg Dias
Project Manager
Modesto Irrigation District
P.O. Box 4060
Modesto, CA 95352

Re: Instream flow study progress reports and request for flow variance

Dear Messrs. Nees and Dias:

This acknowledges receipt of your Instream Flow Study Progress Reports, filed with the Federal Energy Regulatory Commission (Commission) on July 29, 2011. Your first progress report was filed with the Commission on December 8, 2010. Ordering paragraph (D) of the Commission's Order Modifying and Approving Instream Flow and Water Temperature Model Study Plans¹ requires that you file two Instream Flow Incremental Methodology (IFIM) Study Plan progress reports with the Commission. By order dated July 21, 2010,² the due dates for filing the two progress reports were extended to December 11, 2010, and July 31, 2011, respectively. The date for filing the final IFIM report was also extended to April 28, 2012.

¹ See 131 FERC ¶ 62,110 (issued May 12, 2010).

² See 132 FERC ¶ 62,054. Order Granting Extensions of Time Under Ordering Paragraph (D) of the May 12, 2010 Order Modifying and Approving Instream Flow and Water Temperature Model Study Plans.

- 2 -

Your two reports contain status updates on the monitoring related to your IFIM study plan. Review of your reports indicates that they fulfill the reporting requirements of the order identified above. In your July 29, 2011, report, we also note that you requested either a minimum flow variance, or an extension to complete your study plan due to site conditions this year. In particular, you requested a minimum flow of 100 cubic feet per second, for a six-day period between September 11 and September 30, 2011 to allow completion of hydraulic data collection. If the flow variance could not be approved, you instead requested a one-year extension to complete the IFIM study plan. You consulted with the California Department of Fish and Game (CDFG), the National Marine Fisheries Service (NMFS), and the U.S. Fish and Wildlife Service (USFWS) on your flow variance request. You received comments from the CDFG and NMFS. CDFG agreed to the variance, provided it occurs before the arrival of migratory salmon, while NMFS stated that the variance request requires section 7 consultation under the Endangered Species Act (ESA).

Due to the potential impacts to ESA-listed species from the flow variance, approval of the variance should also be coordinated with and approved by NMFS and/or USFWS prior to implementation. In order to provide you with additional guidance on how to further pursue a flow variance, we suggest filing a request with the Commission to be designated as its non-federal representative for conducting informal section 7 consultation for the purpose of a temporary flow variance. This should allow for direct coordination with the NMFS and USFWS. Should you instead decide to pursue a one-year extension to complete your IFIM study plan, you should still consult with the resource agencies on your request and file documentation of such correspondence and approval with the Commission. The Commission will not act on your flow variance or extension request until such information is filed. Otherwise, we will anticipate the final completed IFIM report by the established April 28, 2012 filing deadline.

Thank you for your progress reports. If you have any questions regarding this matter, please contact me at (415) 369-3335.

Sincerely,



John R. Aedo
Fishery Biologist
Division of Hydropower Administration and
Compliance

Document Content(s)

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