



Northern California/Nevada Federation of Fly Fishers

STEELHEAD COMMITTEE

April 29, 2008



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

**Re: FERC ORDER ON TEN-YEAR SUMMARY REPORT UNDER ARTICLE 58
(Project 2299-057)**

Dear Secretary Bose:

I am the Chair of the Steelhead Committee of the Northern California/Nevada Council of the Federation of Fly Fishers (NCCFFF). The NCCFFF is dedicated to the sport of fly fishing and fish conservation. I am writing this letter on behalf of approximately 900 regular members and about 6,000 members in affiliated clubs.

We strongly object to the recent FERC Order (issued April 3, 2008) accepting the Ten-Year Fisheries Summary Report filed by the Modesto and Turlock Irrigation Districts, stating that it complies with the requirements of the revised Article 58 of the Don Pedro Project. We are astounded and bewildered by this Order and how it could have been issued given the scientific data made available to the Commission, and therefore request a rehearing on the matter.

I attended the August 8, 2007 FERC public meeting to discuss the Fisheries Study Plan for the Don Pedro Project (see FERC notice dated July 18, 2007). Also attending this meeting were biologists representing NOAA Fisheries, US Fish & Wildlife Service, and the California Department of Fish and Game. All of these agency representatives expressed strong objection to the Report based on their scientific analyses. Also in attendance were numerous representatives of conservation groups, who likewise protested the adequacy and scientific integrity of the Report.

No one can argue that Tuolumne River Chinook salmon population has drastically declined over the course of the Don Pedro Project's lifespan. Immediately prior to the operation of the New Don Pedro Project, fall-run salmon numbers annually reached 20,000 to 25,000 escaping adults. The average annual salmon production from 1992 through 2006, was approximately 8,941 adults, well below half of the pre-project escapement. The 2006 Chinook production was 500, or well below 3% of the pre-project numbers. Moreover, the 2007 estimate for out migrating smolts is a dismal 937. The previous lowest smolt estimate was 9,960 in 1998, or about 10% of the previous all-time low.

By noting that salmon escapement had declined in the nearby Stanislaus and Merced Rivers as well as the Tuolumne, the FERC Order attributes the decline to "factors outside the rivers." The data do show that the populations in all three rivers declined from 2000 to 2006, however the

decline experienced by the Tuolumne during this period was much more severe. Escapement in the Tuolumne declined by about 96%, while the Merced and Stanislaus declined by 80% and 65% respectively (CDFG Letter to FERC, 8/1/07). On this topic, the CDFG concludes: “neither ocean harvest nor Delta exports, even though they are sources of mortality, are strong controllers of the Tuolumne River salmon population.”

All of the agencies charged with overseeing the protection of salmon, both in their written comments to FERC and by their representatives attending the August 8th, 2007 meeting, arrived at the same conclusion: in stream flow provides the strongest influence upon salmon production in the Tuolumne River. This point is well made in the September 18, 2007 letter to FERC from the National Marine Fisheries Service:

“To date, studies conducted in the Tuolumne River (and in other Central Valley rivers) indicate that as spring flow magnitude and duration increases, the following responses occur: 1) salmon smolt survival increases; 2) water temperature decreases; 3) predation of salmonids decreases; 4) entrainment of salmonids decreases; 5) disease prevalence in salmonids decreases; and 6) both juvenile and adult salmon abundance increases. In addition, emerging science indicates that winter flow magnitude and duration, in addition to spring flow magnitude and duration, is important in determining smolt abundance, which is the primary life history stage influencing adult salmon escapement (Mesick et al. 2007).”

In spite of the overwhelming scientific testimony and evidence to the contrary, the FERC Order declares the Ten-Year Fisheries Summary Report compliant with the requirements of Article 58, and allows the current flow regime to continue indefinitely. This is clearly an abuse of the public trust.

The steelhead section of the FERC Order “Discussion” section is riddled with errors and fails to recognize the “threatened” status of Central Valley steelhead under the Endangered Species Act. The FERC Order states that: “To date, no steelhead have been identified.” To the contrary, there are numerous reports documenting steelhead presence in the Tuolumne River (McBain & Trush 2004; FISHBIO Environmental LLC 2006; McEwan, 2001). The discussion goes on to state “The preliminary results from the CDFG otolith study indicated no anadromy was detected.” The otolith study (Zimmerman, et.al. 2008) was released in early March, well before the April 3, issuance date of the FERC Order, and could have easily been incorporated into it had anyone paid attention to the issue. The otolith study results confirm the presence of at least one anadromous *O. mykiss* whose mother was also anadromous. In addition, nine other *O. mykiss* individuals were determined to have an anadromous maternal origin. A larger sample size would undoubtedly reveal more steelhead in the Tuolumne River.

Furthermore, NMFS considers steelhead to be present in a river if the river has both a resident rainbow trout population and has continuity with the ocean, and presumes that “all juvenile *O. mykiss* in streams where listed steelhead occur are listed juvenile steelhead” (Federal Register, Vol. 71, No. 3 pp 841) and entitled to full ESA protection. Thus, all juvenile *O. mykiss* in the lower Tuolumne River are part of the Central Valley Steelhead DPS and fall under ESA protection. The FERC Order ignores the current ESA status of *O. mykiss* in the lower Tuolumne.

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The FERC Order directs the irrigation districts to implement their *O. mykiss* monitoring plan with some modifications, and file a report in 2010. This means two more years of the Tuolumne steelhead not receiving the ESA protections they deserve. Steelhead are listed under the ESA because they are threatened now, and need ESA protections in place now.

In Conclusion

In light of all of the errors noted above, and the blatant disregard of scientific evidence in the FERC Order, we request an immediate rehearing by the Commission on the matter. It is our opinion that unless the errors and obvious disregard for science is corrected we have little recourse but to seek legal consultation for a remedy.

Sincerely,

A handwritten signature in black ink, appearing to read "Dougald Scott". The signature is fluid and cursive, with the first name being more prominent.

Dougald Scott, Ph.D.
Chair, NCCFFF Steelhead Committee
116 Allegro Drive, Santa Cruz, CA 95060

References

FISHBIO Environmental LLC. 2006. Report 2006-4, 2006 Rotary Screw Trap Report. Report to the Federal Energy Commission.

McBain & Trush. 2004. Report 2004-12, 2004, Lower Tuolumne River Annual Report. Report to the Federal Energy Commission.

McEwan, D. 2001. "Central Valley Steelhead" in *Contributions To The Biology Of Central Valley Salmonids Vol. 1*; R. Brown ed.

Zimmerman, C.; G. Edwards and K. Perry. 2008. Maternal Origin and Migratory History of *Oncorhynchus mykiss* captured in rivers of the Central Valley, California. In Press.