

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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Modesto and Turlock Irrigation Districts )  
New Don Pedro Project ) P-2299-065

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**CONSERVATION GROUPS' RESPONSE TO  
DISTRICTS' MOTION TO CLARIFY RECORD**

Pursuant to 18 C.F.R. § 385.213(a)(3), the California Rivers Restoration Fund, Tuolumne River Preservation Trust, California Trout, Friends of the River, California Sportfishing Protection Alliance, and Golden West Women Flyfishers (collectively, "Conservation Groups") respond to the Modesto and Turlock Irrigation District's (collectively, "Districts") "Motion to Clarify Record of Modesto and Turlock Irrigation Districts," e-Library no. 20080707-5180 (July 7, 2008) ("Motion").

We request that the Commission reject the Districts' Motion as impermissible under 18 C.F.R. § 385.213(a)(2), which prohibits answers to rehearing requests: "An answer may not be made to a protest, an answer, a motion for oral argument, *or a request for rehearing*, unless otherwise ordered by the decisional authority." 18 C.F.R. § 385.213(a)(2) (emphasis added). On its face, the Motion is responsive to the requests for rehearing of the Commission's "Order on Ten-Year Summary Report," e-Library no. 20080403-3004 (April 3, 2008) ("Order") which were filed by the National Marine Fisheries Service (*see* e-Library no. 20080505-5007), the U.S. Fish and Wildlife Service (*see* e-Library no. 20080507-0168), the California Department of Fish and Game (*see* e-Library no. 20080502-5043), and Conservation Groups (*see* e-Library no. 20080506-5000). The Motion states:

The Districts are filing this motion to ensure that the record the Commission will rely upon in acting on the recently-filed requests for rehearing of the Commission's [Order] accurately reflects the results of – and the conclusions that can be reasonably drawn from – the recent studies submitted with and/or referenced in those requests for rehearing."

Motion, p. 1. Despite the Districts' attempt to procedurally recast their answer as a motion, the Motion plainly falls within the prohibition on answers to rehearing requests and should be rejected.

*Conservation Groups' Response to Districts' Motion to Clarify Record  
MID and TID, New Don Pedro Project (P-2299-065)*

If the Commission wishes to hear the Districts' objections to the requests for rehearing, it must do so in a manner that permits briefing by all parties, not just the Districts.

**CONCLUSION**

We request that the Commission reject the Districts' Motion.

Dated: July 17, 2008

Respectfully submitted,



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**CERTIFICATION OF SERVICE**

**Modesto and Turlock Irrigation Districts, New Don Pedro Project (P-2299-065)**

I, Julie Gantenbein, hereby certify that I have this day served the foregoing document, "Conservation Groups' Response to Districts' Motion to Clarify Record," upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated: July 17, 2008

By:



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