



MERCED IRRIGATION DISTRICT



December 5, 2022

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Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 1st St, NE
Washington, DC 20426

Sent via Email and U.S. Mail

Eileen Sobeck
Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100
Eileen.Sobeck@waterboards.ca.gov

Re: Merced River Hydroelectric Project (P-2179) and Merced Falls Hydroelectric Project (P-2467) - National Marine Fisheries Service's October 27, 2022 letter to State Water Resources Control Board Regarding Merced River Conditions

Dear Secretary Bose and Executive Director Sobeck:

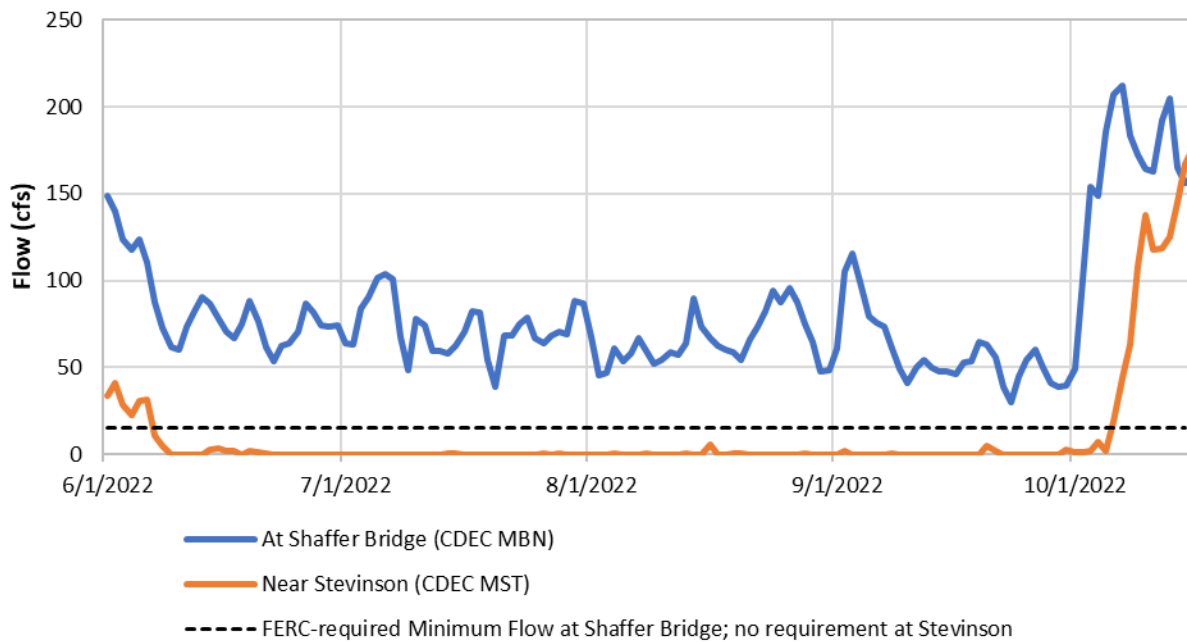
This letter responds, on behalf of the Merced Irrigation District ("MID"), to the October 27, 2022 letter from NOAA's National Marine Fisheries Service ("NMFS") to the Federal Energy Regulatory Commission (FERC) and the State Water Resources Control Board ("State Board") regarding recent conditions on the lower Merced River near Stevinson, California.

In the letter NMFS raises concerns regarding recent alleged "dry river conditions" on the Merced River. MID shares NMFS's concerns regarding the Merced River's flows and water supplies. MID relies on water from the Merced River for a variety of beneficial uses, including irrigation, municipal, power generation, recreation, and fish and wildlife. The public, residents of Merced County and MID's customers, have a significant interest in the ability of MID to successfully track, manage and conserve its finite water supplies. Merced County, and MID's boundaries, encompass and contain a number of Disadvantaged Communities and Severely Disadvantaged Communities, and those communities are particularly

dependent on Merced River water supplies. Reduced Merced River flows and diversions have significant adverse impacts on the local economy, environment, quality of life and the health and safety of Merced County residents who depend on the Merced River for their drinking water supply, their livelihoods and the economic welfare of our local communities.

As a reference, MID’s owns, operates and holds FERC licenses for two hydroelectric projects on the Merced River - the Merced River Hydroelectric Project (P-2179) and the Merced Falls Hydroelectric Project (P-2467) – and an extensive water delivery system. The most downstream facility of the two hydroelectric projects is Merced Falls Dam, which is located 55.0 miles upstream of the Merced River’s confluence with the San Joaquin River and the most downstream water delivery facility is Crocker-Huffman Diversion Dam, located 52.0 miles upstream of the confluence. The FERC licenses establish flow requirements at Shaffer Bridge, which is located 32.8 miles upstream of the confluence with the San Joaquin River. Stevinson, the area noted in NMFS’s letter, is located 4.4 miles upstream of the Merced River’s confluence with the San Joaquin River.

As noted by NMFS in its letter, during the time period raised by NMFS in its letter, the Merced River was flowing well at and below MID’s facilities and usually 50 to 100 cubic feet per second (cfs) above the regulatory flow requirements at Shaffer Bridge, as shown in the figure below. However, due to flow losses in the lower river downstream from Shaffer Bridge, low flows were recorded near Stevinson, as also shown on the figure below, that correspond with when NMFS reports that there were dry areas of the river from bank to bank near the confluence with the San Joaquin River.



While MID cannot control downstream losses, it has repeatedly requested of the State Board that MID be appointed as watermaster for the lower river to identify the many illegal diversions and work with the legal diverters to enhance water conservation. To date, the State Board has not acted on MID’s request.

MID rejects any inferences that it has caused or is responsible for “dry river conditions” or “dewatered conditions” in any part of the Merced River. The portions of the Merced River described by NMFS in its October 27, 2022, letter are 52 miles downstream of MID’s most downstream point of diversion on the river and 28.4 miles downstream of MID’s flow compliance location. MID has diverted water from the Merced River well within its established “pre-1914” and permitted appropriative water rights and is in full compliance with all statutes, regulations, requirements, policies and standards that apply to the diversion and use of water from the Merced River.

The State, and the region, are currently experiencing the effects of a severe multi-year drought. Drought and dry year conditions have reduced stream flows and water supplies in rivers and stream systems throughout the State, including in the Merced River. As mentioned above, MID is also aware that a number of unauthorized and unpermitted diversions have contributed to reduced flows and drier river conditions downstream of MID’s diversions and in the areas described in NMFS’s letter. MID has repeatedly requested that the State Board take action to regulate and limit those unauthorized diversions, including appointing MID watermaster for the lower river.

MID is of the view that the measure proposed by NMFS in its letter to address or mitigate alleged dry river conditions are improper, impractical and unauthorized. Specifically, there is no practical need, or authorization, for an “emergency regulation” calling for “40 percent of unimpaired flow year-round, specifically during the summertime period.” The State Board cannot bypass the procedural requirements for imposition of such flow limits on the Merced River through an emergency regulation. The ongoing, recurring drought conditions would not constitute or qualify as an “emergency” that would justify adoption of a regulation imposing flow limits on the Merced River. There is also considerable doubt whether a broad, uniform 40 percent flow requirement would be feasible during dry year conditions, or that such a flow requirement would actually benefit and protect fish populations. As the State Board is no doubt aware, there are times of year where the regulatory flow releases from the rim dams exceeds the 40 percent of unimpaired flow requirement that NMFS is seeking.

We do appreciate that NMFS indicates in its letter that it “is willing to collaborate with the State Board, Division of Water Rights, to find solutions and opportunities to avoid similar conditions in the Merced River in the future.” MID is also willing to work and collaborate with NMFS, the State Board, the public, local residents, and other parties and stakeholders, to improve and enhance conditions and water supplies on the Merced River, and to most effectively and efficiently protect local fish populations.

MID has proposed several measures to address some of the issues raised in NMFS’s letter. The measures proposed by MID through the voluntary agreement process represent a comprehensive alternative proposal aimed directly at supporting sustainable agriculture, fisheries and the environment. The proposal would enhance environmental conditions while still providing protection and certainty to water supply and water quality in eastern Merced County. The measures would increase Merced River flows over current obligations based on sound science and in combination with eco-system improvements. Flow releases would be made at times proven to benefit migratory salmon. Unlike the State Board’s Bay Delta Plan, the flow releases would occur in coordination with multiple other efforts to support salmon, including habitat restoration and predation management.

MID welcomes the opportunity to work with NMFS, the State Board, the public, local residents and other interested stakeholders to address the issues raised in NMFS’s letter, and to improve and enhance Merced River flows and the beneficial use and application of Merced River water supplies. However, in no case

can MID be responsible or accountable for controlling summertime flows in the Merced River over 50 miles downstream of its facilities.

Please let us know if you have any questions or would like any additional information regarding these matters and MID's efforts to protect the Merced River.

Sincerely,

A handwritten signature in black ink, appearing to read "Phillip McMurray". The signature is written in a cursive style with a large loop at the end.

Phillip McMurray,
General Counsel, Merced Irrigation District

cc: Cathy Marcinkevage, National Marine Fisheries Service
Monica Gutierrez, National Marine Fisheries Service
Erik Ekdahl, Deputy Director, State Water Resources Control Board
Michael McCarty, Michael N. McCarty Law Office, PLLC