



California Natural Resources Agency
DEPARTMENT OF FISH AND GAME
Central Region
1234 East Shaw Avenue
Fresno, California 93710
www.dfg.ca.gov

ARNOLD SCHWARZENEGGER, Governor
DONALD KOCH, Director



November 16, 2009

Hicham Eltal
Deputy General Manager
Merced Irrigation District
744 West 20th Street
Merced, California 95340

**Re: Legal Requirements of California Fish and Game Code for Fish Passage
at the Crocker-Huffman Diversion Dam**

Dear Mr. Eltal:

The Department of Fish and Game (Department) has reviewed our previous direction regarding the fish ladder at Merced Irrigation District's (Merced ID) Crocker-Huffman Diversion Dam, in the context of current condition of the anadromous fish populations in the Merced River, historic and ongoing efforts to manage those populations, and Fish and Game Code (FGC) § 5901, which provides that "it is unlawful to construct or maintain" any barrier "that prevents, impedes, or tends to prevent or impede, the passing of fish up and down stream," unless otherwise authorized by the FGC.

The Department and Merced ID have made several adaptive changes at the Crocker-Huffman Diversion Dam over the years to reduce the impact the diversion and dam have on fish resources. At one time, Merced ID operated a fishway at Crocker-Huffman. Then, in the early 1970s, the Department recommended closing the fish ladder in conjunction with construction of an experimental spawning channel adjacent to the diversion dam. At that time, the Department believed a spawning channel, along with minimum flow releases required by the Federal Energy Regulatory Commission from upstream hydropower projects (Nos. 2467 and 2179), would provide the best opportunity for restoring salmon on the Merced River. Unfortunately the spawning channel experiment failed and Merced ID may no longer rely on the Department's letter from the 1970s. Additional management actions are necessary to maintain and recover anadromous fish in the Merced River.

Today, the Crocker-Huffman diversion dam impedes the passage of resident and anadromous fish up and down stream except during rare high flow events. Meanwhile, the fall-run Chinook salmon (*Oncorhynchus tshawytscha*) and steelhead rainbow trout (*O. mykiss*) anadromous fish populations in the Merced River have deteriorated to extremely low levels. Given this background and the current situation, the Department has determined that fish passage at the Crocker-Huffman

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Water Audit California v. Merced Irrigation District
William McKinnon Declaration Exhibit

WAC 000002

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Diversion Dam must be restored. FGC §5935 states “the owner of any dam upon which a fishway has been provided shall keep the fishway in repair and open and free from obstructions to the passage of fish at all times”. The Department directs Merced ID to consult with the Department to i) make a determination regarding anadromous fish passage adequacy of the existing (but closed) Crocker-Huffman Dam fishway and ii) assist the Merced ID in developing a Crocker-Huffman anadromous fish passage plan¹.

We do not expect nor desire that opening the existing fishway take place in an immediate and unplanned manner, but rather in a thoughtful and collaborative manner that leads to improved fish habitat and fish populations, as well as fitting with Merced ID’s operational needs to the greatest extent possible.

My staff and I look forward to working with Merced ID to restore the passage of resident and anadromous fish over the Crocker Huffman Diversion Dam, as required by the Fish and Game Code. If you have any questions regarding this letter, please contact Mr. Dean Marston, Environmental Program Manager, of my staff at (559) 243-4014, extension 241.

Sincerely,

Original signed by Jeffrey R. Single, Ph.D.

Jeffrey R. Single, Ph.D.
Regional Manager

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¹ This plan would include, but not be limited to, identifying the timeframes for fish passage implementation, restoration of anadromous fish habitat upstream of Crocker-Huffman in conjunction with passing fish upstream of Crocker-Huffman, and development of provisions to preclude further impacts to the Merced River anadromous fish populations as a result of operation of a fishway at Crocker-Huffman Dam.

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cc: Mr. Timothy Welch
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