



MERCED IRRIGATION DISTRICT

December 20, 2022

Julie Vance, Regional Manager
Department of Fish and Wildlife
1234 East Shaw Avenue
Fresno, California 93710

Dear Ms. Vance:

The Merced Irrigation District (“MID”) is in receipt of your letter dated December 8, 2022 to MID General Manager John Sweigard and MID General Counsel Phillip McMurray, generally regarding fish passage at Crocker Huffman Diversion Dam (“CHDD”).

Your letter references a November 16, 2009 letter from California Fish and Wildlife (“CDFW”) to MID regarding fish passage at CHDD, including consulting with CDFW, determining the adequacy of the existing fishway and developing a fish passage plan. Your letter states that MID did not respond to CDFW’s 2009 letter. This implies that MID ignored the letter and that there was no follow-up between the parties. However, as a follow-up to CDFW’s 2009 letter, MID and CDFW agreed to hold a technical consultation meeting on or about February 22, 2011 at MID’s office in Merced. That meeting was attended by MID staff, including myself, as well as CDFW representatives including Tim Heyne and Dean Marston. Among other issues, Tim, Dean and I discussed: 1) the benefits to fall-run Chinook salmon of having access to the 1.5-mile-long CHDD impoundment and 1.3-mile-long section of river between the impoundment and Merced Falls Dam; 2) logistics of opening the existing fish ladder; 3) potential impacts/concerns related to the resumption of fish passage at CHDD Dam operations on CDFW’s Merced River Fish Hatchery, especially in light of the ongoing California Hatchery Review Project; and 4) MID’s water deliveries at CHDD. In addition and as part of the consultation, MID coordinated a site visit to CHDD with CDFW staff.

During the February 2011 MID/CDFW consultation meetings, CDFW staff indicated CDFW’s long range goal was to restore fish passage at CHDD, but there were many considerations before that could or would occur. Your staff specifically pointed to the paragraph in CDFW’s 2009 letter that states *“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 understanding after the 2011 meeting and site visit was that CDFW staff wanted to take a closer look internally at issues affected by the

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

WAC 000226

resumption at fish passage at CHDD, as described above before attempting to open up the ladder.

My recollection is that MID did not hear from CDFW after our 2011 consultation meeting and site visit until we received your December 8, 2022 letter.

In addition to the above efforts, there have been various discussions over time regarding fish passage at CHDD Dam; the CDFW fish hatchery; and other related items and issues. These discussions have occurred in various forums, including as part of the larger relicensing process. On a larger scale, MID is involved in ongoing discussions with regulatory agencies, including CDFW and NMFS, in numerous forums regarding the management and improvement of fish species and habitat on the Merced River, including the maintenance and restoration of salmon runs in the Central Valley that are currently supported by the CDFW Merced River Fish Hatchery. The discussions are part of the ongoing FERC relicensing proceedings that began in 2008 for the Merced River and Merced Falls hydroelectric projects, the related Endangered Species Act consultations with NMFS, the related Clean Water Act Section 401 water quality certification proceedings in front of the State Water Resources Control Board (SWRCB), negotiations of voluntary settlement agreements regarding implementation of the 2018 Bay-Delta Plan Update, and proceedings involving the Stanislaus, Tuolumne and Merced (STM) working group on the implementation of the biological goals for the lower San Joaquin River flows adopted as part of the 2018 Bay-Delta Plan Update.

MID intends to continue its involvement in the ongoing proceedings and forums that consider a broad array of interrelated and important issues of habitat, species, flows, and water management on the Merced River and downstream. The referenced Water Audit California lawsuit adds nothing to the ongoing collaborative and holistic discussions with CDFW, and other regulatory agencies, and instead hinders and impedes those discussions and collaborative efforts.

I would be happy to answer any further concerns or questions you have on this matter.

Regards,



Bryan Kelly

Cc: John Sweigard, MID
Phillip McMurray, MID