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Herbert A. Pollard II, Chair | Charles A. Tracy, Executive Director

April X, 2017

Bill Croyle, Acting Director
California Department of Water Resources
P.O. Box 942836, Room 1115-1
Sacramento, CA 94236-0001

Federal Energy Regulatory Commission
Acting Director

Dear Mr. Croyle and _____:

The Pacific Fishery Management Council is providing the following comments regarding the Federal Energy Regulatory Commission's (FERC) proposed relicensing of the California Department of Water Resources (DWR) Oroville Facilities Hydroelectric Project on the Feather River in California.

While the focus of this letter surrounds comments on the longer-term proposed project relicensing, the Council would like to first recognize the efforts undertaken by your agencies and staff to respond to the recent crisis at the Oroville dam spillway. The Council recognizes and wholly agrees that ensuring public safety and the protection of life and property are of the utmost importance during this, and any, emergency response. We also agree that repair to the damaged Oroville spillway is the top immediate priority. Please let us know if the Council or our staff can be any support to you as you proceed through planning and execution of emergency repairs.

As you know, the Council is one of eight Regional Fishery Management Councils established by the Magnuson-Stevens Fishery Conservation and Management Act (MSA) of 1976, and recommends management actions for Federal fisheries off Washington, Oregon, and California. The MSA includes provisions to identify, conserve and enhance essential fish habitat (EFH) for species regulated under a Federal fishery management plan. As defined in the MSA, the term "essential fish habitat" means those waters and substrate necessary to fish for spawning, breeding, feeding or growth to maturity.[1]

Section 305(b)(3)(A) of the MSA authorizes the Council to comment on any Federal or state activity that may affect the habitat, including EFH, of a fishery resource under its authority.

[1] For the purpose of interpreting this definition of EFH: ''waters'' include aquatic areas and their associated physical, chemical, and biological properties that are used by fish and may include aquatic areas historically used by fish where appropriate; ''substrate'' includes sediment, hard bottom, structures underlying the waters, and associated biological communities; ''necessary'' means the habitat required to support a sustainable fishery and the managed species' contribution to a healthy ecosystem; and ''spawning, breeding, feeding, or growth to maturity'' covers a species' full life cycle (50 CFR 600.10).

Furthermore, the Council is obligated under Section 305(b)(3)(B) to provide comments and recommendations for activities that the Council believes are likely to substantially affect the habitat of an anadromous fishery resource under its authority.[2]

The Council believes this proposed relicensing action may substantially affect our managed Chinook salmon stocks.

The Council represents the interests of the Federal government, tribal governments, state governments and the sport and commercial salmon fishing communities that depend on our management actions, including our duties under EFH to take action to conserve fresh water habitat for the salmon runs of the west coast. This letter pertains in particular to the habitat conditions needed for the Feather River runs of the Sacramento River fall Chinook salmon. The Feather River, downstream of the Oroville Dam Fish Barrier, is designated as EFH for Chinook salmon (PFMC 2014).

Sacramento River fall Chinook salmon are a major component of the salmon fishery in the marine and inland waters in California and Oregon, providing an average of 60 percent of the ocean harvest to the Oregon fishery south of Cape Falcon and as much as 95% of the California harvest. Further, the Feather River salmon population is the single largest contributor to the Sacramento River fall Chinook harvest in the west coast salmon fishery.

We support the structural and operational fixes required by the National Marine Fisheries Service's recent biological opinion (BiOp) on the proposed relicensing (NMFS 2016) of Oroville Dam. Specifically, we are interested in the requirements that improve conditions for salmon in the Feather River.

Some of the prescriptions in the BiOp to minimize adverse effects on critical habitat of ESA-listed winter-run Chinook may take precedent over measures to protect EFH for fall Chinook; however, considering both Section 7 needs and EFH criteria, the basic need for all salmon is adequate clean and cool water. Without cool water, any future habitat modifications are doomed to failure. The existing thermal pollution coming from the Thermalito Outlet is seriously hindering successful egg survival of downstream salmon redds below the outlet on the Feather River. Therefore, the Council stresses that FERC and DWR must prioritize actions to address high water temperatures resulting from the Thermalito Complex before addressing additional habitat needs. This is the most serious problem and warrants immediate remedy.

Specific to EFH needs, Section 3.2 of the BiOp acknowledges that there will be adverse effects to EFH. Section 3.3 of the BiOp offers Conservation Recommendations that recognize addressing all the previously identified thermal targets will benefit EFH. Further, in combination with other identified enhancement actions, the Oroville Dam restoration programs will result in approximately 242 acres of enhanced EFH. In addressing structure-related thermal issues, the 2006 Final Reconnaissance Study Report, cited in the BiOp, offers several possible ways to address the thermal problems. We encourage you to define and implement the agreed-upon preferred options as soon as possible.

[2] The regulatory guidance that implements the EFH provisions of the MSA (50 CFR Part 600) defines an "adverse effect" as any impact that reduces quality and/or quantity of EFH. Adverse effects may include direct or indirect physical, chemical, or biological alterations of the waters or substrate and loss of, or injury to, benthic organisms, prey species and their habitat, and other ecosystem components, if such modifications reduce the quality or quantity of EFH.

Again, we recognize that repair to the damaged Oroville spillway is the top priority in the near term. As emergency response operations actions subside, and as we move forward with longer term, non-emergency actions, we encourage the DWR to proceed with actions already identified in the BiOp that would improve thermal conditions for salmon. It is also important for FERC to consider the impacts on downstream spawning and rearing habitat that resulted from the spillway damage and emergency release of water in the emergency spillway. Sedimentation of spawning habitat in the low-flow channel and other downstream areas, caused by clay eroding from the two spillways and collapsing streambanks, is of particular concern.

We support giving ESA-listed spring-run Chinook their own spawning section of river in the low-flow channel in order to address the problem of superimposition by, and genetic introgression with, fall-run Chinook, as agreed to in the 2006 Settlement Agreement. This would involve installation of a segregation weir. Please note that failure to fix the thermal pollution problem while complying with the required weir is likely to harm natural area production of fall-run salmon. EFH recommendations for Chinook salmon spawning habitat indicate a maximum average temperature of 17° C and an optimum in the range of 5° to 14°C (Table 4 PFMC EFH Description). A segregation weir will constrain the spawning fall run to the high flow channel where temperatures will exceed the lethal threshold for salmon. Any spawning below the Thermalito Outlet will be severely compromised.

We respectfully request, when possible, that FERC and DWR provide the Council with their schedule for implementing the habitat improvement projects, in particular those that address the exposure of fall-run Chinook salmon to high water temperatures so that we can evaluate their effects on this important stock.

Again, we thank you for your ongoing efforts to respond to the Oroville spillway emergency. When non-emergency operations resume, we appreciate your attention to these comments and look forward to your response.

Sincerely,

Charles A. Tracy
Executive Director

JDG:xxx

cc:

Council Members
Mr. Judson Feder
Habitat Committee
The Hon. John Garamendi, U.S. Representative, California 3rd District
The Hon. Doug LaMalfa, U.S. Representative, California 1st District
The Hon. Jim Nielsen, California Senate 4th District