



**UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration**

NATIONAL MARINE FISHERIES SERVICE
Southwest Region
501 West Ocean Boulevard, Suite 4200
Long Beach, California 90802-4213

NOV 26 2002

In reply please refer to:
151422-SWR-02-SR-6412:JTJ

Magalie Roman Salas
Office of the Secretary
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

Dear Ms. Salas:

This document transmits the National Marine Fisheries Service's (NOAA Fisheries) final biological opinion on the proposed license amendment for the Potter Valley Project (Federal Energy Regulatory Commission [FERC] No. 77-110). The Potter Valley Project is located in Lake County and Mendocino County, California on the upper Eel River with diversion to the Russian River in Mendocino and Sonoma counties, California. The biological opinion analyzes the effects of the Potter Valley Project, on coho salmon, chinook salmon, steelhead, and designated critical habitat in accordance with section 7 of the Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531 et seq.).

This document also transmits NOAA Fisheries' Essential Fish Habitat (EFH) Conservation Recommendations for Pacific coast salmon which may be affected by the proposed action, as required by the Magnuson-Stevens Fishery Conservation and Management Act (MSFCMA), as amended (16 U.S.C. 1801 et seq.).

The scope of the proposed action is a proposal for a flow regime in the Eel River designed to meet Pacific Gas and Electric Company's (PG&E) hydropower needs while protecting and maintaining the fishery resources in the Eel and Russian rivers. This proceeding is an extension of the re-licensing proceeding which concluded in 1983 with instructions to PG&E to operate under a specific flow regime (Article 38) while investigating whether modifications in the flow release schedule or project structures and operations would be necessary to protect and maintain the fishery resources (Article 39).

PG&E conducted the ten year study as required by Article 39 and concluded that the Article 38 flows were not sufficient to protect and maintain fishery resources; therefore, PG&E has proposed a new flow regime designed to meet this goal as mandated by the FERC license. This



license modification was planned at the time of the re-licensing and built into the license to allow the project to proceed even though the necessary studies were not yet complete and the full impacts of project operations on fisheries were not known. As such, the current proposal is a proposed flow regime for the Potter Valley Project pursuant to the relicensing process. The appropriate analysis under section 7 of the ESA is to assess the final flow regime being proposed as the product of the re-licensing process to determine whether the proposed flow regime and project operations are likely to appreciably reduce the likelihood of survival and recovery of listed species.

During section 7 consultation, NOAA Fisheries reviews the status of the species and the environmental baseline of the affected area in order to analyze the proposed action within the context of the factors that have led to the decline of the species and the species' chances for survival and recovery in the face of on-going threats. The existence and past operations of the Potter Valley Project are a part of the environmental baseline and NOAA Fisheries has reviewed them as such. However, for purposes of determining whether future operations of the Potter Valley Project are likely to appreciably reduce the likelihood of the survival and recovery of the listed species, NOAA Fisheries has analyzed the proposed action in consideration of the fact that this license modification is a deferred phase of the re-licensing proceedings.

Conclusions

NOAA Fisheries' finding in the final biological opinion is that the proposed action is likely to jeopardize the continued existence of southern Oregon/northern California coho salmon, California coastal chinook salmon, and northern California steelhead. Pursuant to ESA regulations, 50 CFR § 402.14 (h) (3), the jeopardy opinion includes a reasonable and prudent alternative (RPA) designed to modify project operations to avoid jeopardizing these species.

Because this biological opinion has found jeopardy to listed species and adverse modification of critical habitat, FERC is required to notify NOAA Fisheries of its final decision on the implementation of the RPA.

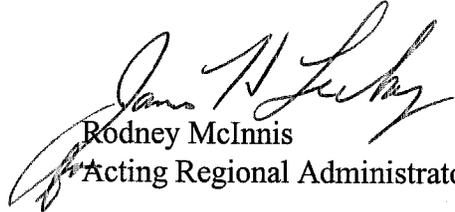
The biological opinion is based on information provided in the Draft Environmental Impact Statement (FERC February 1999), Final Environmental Impact Statement (FERC May 2000), the Article 39 Joint Recommendation (PG&E March 1998), Flow Implementation Compliance Plan (PG&E September 1998), and other sources of information. A complete administrative record of this consultation is on file in NOAA Fisheries' field office in Santa Rosa, California.

Further, section 305(b)(4)(B) of the MSFMCA requires FERC to provide NOAA Fisheries with a detailed written response within 30 days to these EFH Conservation Recommendations, including a description of measures adopted by FERC for avoiding, minimizing, or mitigating the impact of the project on EFH (50 CFR 600.920(j)). In the case of a response that is inconsistent with NOAA Fisheries' recommendations, FERC must explain its reasons for not following the recommendations, including the scientific justification for any disagreements with

NOAA Fisheries over the anticipated effects of the proposed action and the measures needed to avoid, minimize, or mitigate such effects.

If you have questions about this section 7 consultation or EFH consultation, please contact Mr. Patrick Rutten at (707) 575-6059.

Sincerely,



Rodney McInnis
Acting Regional Administrator

enclosure

cc: service list (FERC - 77)