



February 1, 2010

Re: Stanislaus River Issues

The NMFS OCAP-BO for *O.mykiss* for the operation of New Melones is fundamentally flawed. In addition to being fundamentally flawed the RPA's proposed in the OCAP-BO for New Melones will have devastating impacts on *O.mykiss* and fall-run Chinook population in the Stanislaus River Basin.

The sole biological justification for the New Melones RPA's is contained in a poorly referenced and unscientific memo from Rhonda Reed to NMFS dated May 31, 2009 (enclosed). This is it! Several "highlights" concerning the memo:

- As described by Mr. Yip the basic NMFS analytical framework was not used to address Stanislaus River *O.mykiss* or fall-run Chinook Salmon, but was used on every other river. Why?
- No discussion of baseline population or life history characteristics of *O.mykiss* or fall-run Chinook Salmon.
- No abundance or distribution of *O.mykiss* or fall-run Chinook salmon in Stanislaus River.
- No discussion quantitatively or qualitatively of potential benefits to *O.mykiss* or fall-run Chinook salmon due to RPA's.
- No discussion of present limiting factors for *O.mykiss* or fall-run Chinook salmon.

The memo is literally taken out of thin air. The citations/bibliography on the last page total eight. Three of those are personal communications. This is for RPA's that will result in the average annual increase in releases from 200,000 afa to almost 400,000 afa.

There are two major flaws with the BO that then stretch their sinuous tendons out into a host of other issues/problems.

1. NMFS/USBR never ran a complete hydrology modeling set incorporating all of the Bureau's legal obligations and the RPA temperature objective.
2. NMFS never ran the Stanislaus River Basin Temperature Model. Since they did not run the model they do not know if the temperature objectives can be met, and if so, at what water costs.

If NMFS had done its job it would have ascertained:

- The temperature objectives they established can not be met.

- Reservoir releases to meet temperature objectives cause huge releases of water that cause long term systematic temperature and flow issues.
- The reservoir releases result in no coldwater pool at New Melones.
- The reservoir releases result in no water to meet flow and temperature objective without violating USBR's other legal obligations.

To wit:

Temperature:

- Temperature objective cannot be met 80% of the time in April.
- Temperature objective cannot be met 90% of the time in May.
- Temperature objective in summer causes significant increases in the release due to daily maximums. Since 2004 the BO temperature objective has been a daily average at OBB. The water costs to protect 1° is significant (see Dotan attached). The benefit to *O.mykiss* is questionable in the short term and clearly detrimental in long term.
- Temperature objective only improves 15% of the time in October from 35% historically to 50% with RPA.
- Temperature objectives are for Pacific Northwest fish populations and not for CV *O.mykiss*.
- Absolutely, no discussion, citation, or evidence that *O.mykiss* are temperature limited.
- The current flows on the Stanislaus maintain a coldwater pool which protects the *O. mykiss* fishery in subsequent drought years (such as 2006-2009).
- Increasing flow in the spring causes water temperatures to increase. What is more important flow or temperature? What takes priority?

Hydrology:

- RPA's cannot work without violating other legal obligations of New Melones.
- New Melones falls below the coldwater pool of 300,000 af 20 years out of 80 years whereas under 1997 IPO it was 1.
- 1997 IPO met all of the USBR's legal obligation.
- The USBR has no idea how it can meet its other legal obligations and meet the RPA's (See attached correspondence).

Biology:

- Third year of drought and over 15,000± *O.mykiss* in Stanislaus River.
- Third year of drought and poor ocean conditions and more than 1,300 fall-run Chinook salmon returned to spawn in 2009. This is the highest return in San Joaquin River Basin and third highest in entire Central Valley.
- Rotary screw trap catches demonstrate a consistent outmigration of *O.mykiss* since 1997.
- Rotary screw trap catches demonstrate a fairly consistent and large outmigration of fall-run Chinook salmon smolts.

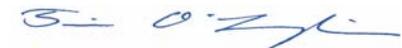
- NMFS uses fall-run Chinook salmon as a surrogate even though NMFS has found that *O.mykiss* are significantly different than fall-run Chinook salmon, and they are no longer part of the Pacific Salmonid ESU because they are so different. 71 Federal Register 834 at p. 838 (1-5-06). Copy attached.
- Rotary screw trap catches and frequent snorkel surveys show healthy and abundant *O.mykiss* (i.e. temperature and flow not limiting factors).

Less water impacts and equal protection.

- The Districts proposed to USBR, USFWS, CDF&G an Operation Plan at New Melones to firm up fishery flows. The goal of the plan was to RAISE the floor, not blow off the roof. The plan would have provided substantially more flow for *O.mykiss* and fall-run Chinook salmon in dry, and more importantly, successive dry years. The plan and its supporting documentation are attached.
- Also attached is a dissolved oxygen (DO) petition the Districts put together and presented to USBR and USFWS. The goal was to improve DO and Temperature objectives where they needed to be in the summer, at Orange Blossom Bridge. Copy attached. This could result in significant water savings at New Melones, while also benefiting the fishery.
- There is no need for geomorphology flows. *O.mykiss* don't use floodplain habitat the way Chinook do, and such a short duration flows will not benefit Chinook. Clearly Ms. Reed has never been to the Stanislaus River, and no simulation modeling was completed to evaluate how the proposed flows would increase, or decrease, floodplain inundation.
- Fall migration flows are not warranted.
- Data collected at the Stanislaus adult counting weir since 1993 suggest fall-run Chinook enter the Stanislaus River under a vast myriad of conditions (some according to NMFS, are lethal!), and are not "stimulated" to migrate upstream by reservoir releases.
- There is no justification for January/February pulses, and no evidence is cited. Depending on the year type the increases may do more harm than good by pushing fall-run Chinook salmon fry out too early.
- The value of a sixty day pulse flow at Vernalis is not supported by the data. Outflow needs to be earlier due to pumping by irrigators and lethal water temperatures in San Joaquin River. 95% smolts on Stanislaus River are out by May 15th. New requirement is going to June 1st.
- OID and SSJID will be petitioning CDF&G and the California Fish and Game Commission to implement a Bounty program for Stripers and other non-native fishes in the Stanislaus River. See attachments.

Very truly yours,
O'LAUGHLIN & PARIS LLP

By:



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