



Michelle Lobo  
State Water Resources Control Board  
Division of Water Rights  
P.O. Box 2000  
Sacramento, CA 95812-2000

June 29, 2012

Dear Ms. Lobo:

This letter is in response to the June 22, 2012 letter to the State Water Resources Control Board (Board) from the National Marine Fisheries Service in regards to a petition from the Golden Gate Salmon Association (GGSA) and the California Sportfishing Protection Alliance (CSPA) to the Board to amend the Clean Water Act Water Quality Certification (Certification) for the Federal Energy Commission's relicensing of the Oroville Facilities Hydroelectric Project (FERC #2100).

In their letter, NMFS asserted the following:

The petitioners presented evidence, most of which was gained from NMFS in a Freedom of Information Act (FOIA) request, regarding recent information on federally threatened Southern distinct population segment of North American green sturgeon (*Acipenser medirostris*) in the Feather River. Our records show that Exhibit F, of the petition, was not gained through FOIA...

This assertion is incorrect, and we have asked NMFS to correct the record. On March 1, 2012, in their sixth interim response to a GGSA FOIA, NMFS sent GGSA a compact disk containing twenty-six documents responsive to our request, including the document later included in our petition as Exhibit F. NMFS labeled the file in question "Draft Green Sturgeon RPA.doc." This title, and the text contained in that file, clearly indicate that it is a draft Reasonable and Prudent Alternative for a NMFS Biological Opinion on Feather River green sturgeon. Indeed, the first lines of the document state:

NMFS has determined that the proposed action is likely to jeopardize the continued existence of the Federally threatened Southern DPS of North American green sturgeon and is likely to adversely modify the proposed critical habitat for the Federally threatened Southern DPS of North American green sturgeon. According to (50 CFR§402.14(h)(3)) NMFS is required to develop a reasonable and prudent measure to avoid jeopardy and/or adverse modification.

NMFS further urges the Board not to use Exhibit F "in making decisions about how to proceed with the certification." We respectfully maintain that Exhibit F must be included, as it was previously withheld from the record. As we stated in our petition, if the Board had been provided satisfactory information regarding green sturgeon during the time it spent certifying the Oroville Facilities, we believe that the Board would have

developed measures that more adequately protect the beneficial uses related to all anadromous species.

Unfortunately, NMFS's letter raises more questions than it answers in this matter. It likely has not escaped the notice of the Board that NMFS failed to provide a response to the Board's direct request for NMFS to state whether it believes a workshop is warranted.

We hope a letter from NMFS correcting the record is forthcoming. In addition, it would be helpful if NMFS could answer the following questions raised by its June 22 letter:

1. Does NMFS believe a workshop is warranted in this matter?
2. Why did NMFS fail to provide the information contained in Exhibit F to the Board during development of the Certification?
3. Why didn't NMFS inform the Board that they knew green sturgeon were spawning in the Feather River and had at a minimum considered issuing a jeopardy Biological Opinion?

GGSA and CSPA appreciate the Board's efforts thus far and thank you for your attention in this important matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Victor Gonella", with a long horizontal flourish extending to the right.

Victor Gonella  
President  
Golden Gate Salmon Association

A handwritten signature in black ink, appearing to read "Bill Jennings", with a stylized, cursive script.

Bill Jennings, Chairman  
Executive Director  
California Sportfishing Protection Alliance