

Sent: Tue, April 26, 2011 10:55:11 PM

Subject: Update--Middle Fork American River Relicensing Process

Hello, all. I haven't done an update for awhile for the reason that we have been close to reaching an agreement for quite some time. As always, the devil is in the details, but when time begins to grow short (as is the case here) everyone, including the licensee, is increasingly motivated to reach consensus. ***I am pleased (ecstatic, actually) to report that today at around 3:00 p.m., we did in fact reach agreement on all of the major issues relating to instream flows and flow-related mitigation measures, for the peaking reach of the river.*** I am especially pleased because the rivers, streams, and creeks that are affected by the hydro project are right in my back yard, and we have ensured major permanent benefits for their fisheries.

As you will recall, we reached tentative agreement on the upper, or "bypass" reaches some time ago; everyone understood that ultimate agreement depended upon a consensus-based agreement the entire package, because although the two areas (bypass and peaking reaches) are separate in some respects, they are intricately related in the overall picture. The overall package had to make economic sense to PCWA in terms of both lost generation cost of the agreement, and preservation of operational flexibility. It also had to make sense to the federal and state agencies, who are legally required to write enforceable conditions into the permit language, and exercise their duties that require protection and management of the resource. It also had to be acceptable to the Foothills Angler Coalition (represented by Tom Bartos and me) and the other NGOs, in terms of addressing each group's expressed interests. In our case (i.e., F.A.C.), our interests were in establishing minimum instream flows at levels that are protective of fish, BMIs, and habitat, during all of the six water year types, on a month-by-month basis; limiting peaking to the extent reasonable and feasible; establishing periods for anglers to wade and fish safely; and protection of spawning fish, their eggs, fry, and young of the year from stranding and predation.

Regarding the agreement on minimum instream flows, we achieved most of our goals and objectives. Flows will be increased and maintained at levels which will allow the Middle Fork to function more like a good tailwater system. As soon as the revised instream flow chart is provided to us by PCWA, I will forward it to you.

There are a number of other important components of the agreement:

1. An agreement by PCWA to endeavor, in good faith, to limit peaking to the extent possible by operating Oxbow Lake **during the winter months** primarily as a regulating facility. PCWA is drafting language on this point, which we will all review at next week's meeting; however, all of the "business points" were agreed upon unanimously, so we are confident that we have put this one to bed. This agreement will not be a license condition, but will be contained in an enforceable side agreement.
2. A new spawning channel will be established in the half mile below Oxbow dam, with appropriate minimum flows of cold water during the rainbow spawning and rearing period, and lower cold water flows during the rest of the year. PCWA will maintain these flows as a license condition, and will annually provide spawning gravels in this section to replace that which has been washed downstream. This is a very significant element of the agreement, because the science shows that because of peaking there is little, if any, spawning in the mainstem MF. Virtually all MF spawning now occurs in the tributaries.
3. A recreational flow regime has been established (a few tweaks remain to be agreed upon between the commercial and recreational boaters, but PCWA will agree to whatever settlement is reached between those two interests).
4. While we will still have to live with peaking during the non-winter months, protective ramping has been established on both the up-ramp and down-ramp shoulders of the peaks, in order to protect against stranding of fish and BMIs.
5. In the past there has been no way to know what flows to expect on a day-by-day basis, or for any other temporal period. We have obtained agreement from PCWA that it will post on its web site a day-by-day firm statement of the next day's flows for weekdays, and a weekend flow schedule for the weekends.

