

**PROTEST AND COMMENTS OF THE FEATHER RIVER RECOVERY ALLIANCE (FRRA)**  
**IN OPPOSITION TO FERC ISSUING FURTHER UNCONDITIONAL ONE YEAR LICENSES**  
**TO THE DWR TO THE CALIFORNIA DEPARTMENT OF WATER RESOURCES TO OPERATE THE**  
**OROVILLE DAM**

**SUMMARY**

The FRRA submitted a protest with FERC protesting the issue of a long-term license to the DWR to operate the Oroville Dam before a supplementary environmental Impact Review (EIR) is completed and the 2006 Settlement Agreement is renegotiated, particularly with respect to recreation.

**In this submission, we are protesting in addition the continual issue of unconditional one-year licenses. In future, FERC should only issue one-year licenses on the following conditions:**

- 1. A supplementary EIR is to be completed within a year;**
- 2. The terms of the Settlement Agreement relating to recreation are renegotiated with the Oroville community;**
- 3. The DWR provides annual payments to the Community which hosts the Dam consistent with the intent of the original license.**

In principle, the continuous issue of unconditional one-year licenses is incongruent with the role of a regulator unless the normal requirements for a long-term license have been fulfilled.

The DWR claims that the requirements for a 50-year license extension have been fulfilled and that does not know the reasons for the delay. It is requested that FERC releases the outstanding requirements so that these are understood by stakeholders and steps taken to resolve them.

So long as the DWR receives unconditional one-year licenses they can continue to operate the Dam without documenting or dealing with some of the risks involved or the establishment of a satisfactory basis for the support of recreation as was envisioned in the original license.

In the case of Oroville Dam, continual short term licenses are particularly problematic because the proposed long term license was based on an Alternative Licensing Process (ALP). This circumvented many of the usual objective studies required for relicensing such as a comprehensive EIR. It resulted in an unsatisfactory Settlement Agreement which was not signed by several stakeholders. The negotiations of this were manipulated to exclude those who were opposed while offering financial inducements, somewhat arbitrarily, to those whose support was thought necessary. As far as we know, the ALP has not been used in relicensing any other dam.

As a result of the fifteen-year delay, The Relicensing Agreement that is on the table is out of date because of changing climate conditions, the aging of the Dam and the evolution of society's recreation needs. Issuing further one-year extensions will only exacerbate this situation

The ALP did not provide information normally required for relicensing and the DWR has not addressed the outstanding issues adequately during the license hiatus.

## BACKGROUND

### 1. RISK AND SAFETY

Among the unfulfilled conditions for a license are:

There has not been a proper assessment of risk. This would have been included in an EIR. The Spillway Incident of 2017 demonstrated that the risk of the main spillway breaking up was not properly assessed by adequate examination of its condition and the risk of the emergency spillway eroding, which was well documented when the dam was built, was ignored. Disengeniously, the DWR continues to claim in legal hearings that the collapse of the two spillways could not have been foreseen. With an aging dam it is likely that risks relating to other aspects of the Dam were overlooked in the Relicensing Process

The DWR has attempted to make up for this deficiency in three ways:

First, by commissioning an Independent Forensic Team Report, which was supported by the FERC After Action Report. These reports add to the understanding of the spillway failure and have valuable recommendations for the DWR. But, some of the important recommendations have not been adopted by the DWR as we have pointed out in our previous submissions to FERC which include a report by Dr. Rune Storesund on 'Community Safety Following Comprehensive Study – Oroville Dam'.

Second, by establishing a Comprehensive Needs Assessment (CNA) team of DWR staff with consultation from three Independent Experts and involvement of an Ad Hoc Committee of informed citizens. This group met regularly over a year and published a report which has value. But, the conclusions are weakened by flaws:

- The basis of the assessment was the opinions on potential hazards and of their likelihood and impact by the DWR staff, largely the same people who had been responsible for the failures which had resulted in the spillway incident. There were no independent studies to quantify risks, for instance of earthquakes, and the list of hazards was far from comprehensive for instance: releases from the dam over 150,000 cfs, which have happened and are almost certain to happen again, were not studied although collapse of the Dam, rightly considered as highly improbable, was.
- The opinions of non DWR Dam professions and experience at other dams was, at best, only incidentally taken into account.
- The assessment was not comprehensive. The independent consultants advising on the project made this point as did the Ad Hoc Committee but the DWR ignored this advice and continued to publicize the CNA as 'comprehensive' thus suggesting that no further studies were needed.

FERC has implicitly acknowledged the limitation of the CNA for instance pointing out in its comments on DWR plans to fix the decaying spillway head gates that the CNA report conclusions should not be used to justify specific actions unless its conclusions are supported by hard data.

It is also unfortunate that the comments of the Ad Hoc Committee were not properly discussed and its opinions largely ignored.

So, the CNA report in no way replicates the independent studies needed for the licensing of a dam of the size of Oroville Dam and thus cannot be considered as a replacement for studies required for licensing.

Thirdly, the DWR was involved in the establishment of the Oroville Dam Citizens Advisory Committee (OCAC) set up following a bill passed in the California Legislature. In principle, this was an important step forward and in practice the meetings have provided relevant details of what is happening at the dam and DWR's approach. The meetings have also allowed community representatives to raise their concerns in a forum presided over by the Secretary of Natural Resources and the Director of the DWR.

However, the potential of the OCAC has been limited because:

- The agenda has generally been established by the DWR without any real input from the Commissioners or community;
- Issues brought up are not debated within the Commission with consensus or recommendations reached rather they are tabled and may or may not get addressed at subsequent meetings – see Attachment for FRRRA follow up on questions raised after the OCAC Flood Control Workshop held on April 22<sup>nd</sup> which illustrate the frustration in dealing with issues on a question and answer basis without the possibility of dialogue.
- The OCAC has not provided the DWR with any specific advice, and no effort has been made to develop specific recommendation or advice.
- No opportunity has been allowed to follow up on the recommendations of Dr. Rune Storesund in the only truly independent report on risks which was presented at the May 2022 meeting. This report was submitted to FERC in our Protest dated September 10<sup>th</sup> 2021.

The OCAC, like the CNA, has done little to strengthen the DWR's case that the risks associated with the Dam have been properly assessed or that there is reason for the Community to trust the DWR to operate the Dam more prudently in the future than they have in the past.

The DWR appears to be expecting the OCAC to endorse the relicensing of the Dam on the terms decided in 2007. But, the present governance of OCAC, which does not allow seeking Commissioners' opinion on specific motions or voting, will mean that the value of any endorsement would be limited.

## 2. RECREATION

The Community dissatisfaction with the relicensing process, particularly about the terms of the Settlement Agreement has not been addressed. Previous submissions to FERC by the FRRRA, (see Protest dated September 10<sup>th</sup> 2021), have documented the shortfalls of the Settlement Agreement particularly with respect to recreation.

The County did not sign the Settlement Agreement and several other community organizations withdrew from the negotiations. Two years ago, the Oroville Recreation Advisory Committee (ORAC) withdrew.

Oroville City, the Oroville Chamber of Commerce and the Feather River Recreation and Park District have considered withdrawing from the Settlement Agreement but have decided not to at this stage. The DWR has offered short term financial inducements to discourage withdrawal and encouraged belief

in the groundless concept that withdrawal would result in liabilities connected to the repayment of funds made to the community by the DWR during the license hiatus. Lawyers with connections to the State Water Contractors and the DWR have also promoted this belief. In fact, that these payments were obligations in the original license provided to compensate the community for hosting the Dam and, in any event, there are no legal grounds for the DWR to expect repayment based on the Settlement Agreement that does not come into effect until a license is issued. However, the threat of litigation by a powerful organization like the DWR can be persuasive even if there are no grounds.

The DWR has stopped making payments to the Special Benefit Fund until the Dam is relicensed and is, in effect, holding the Community to ransom to encourage support for long term relicensing. Given the history of broken promises, that the FRRRA has documented in filings to FERC, the community cannot be expected to rely on the DWR's assurance that the terms of the Settlement Agreement can be discussed and improved after, but not before, a long-term license is issued.

The provision of support for recreation in the past has not resulted in anything like the increase of numbers of people visiting Oroville that was anticipated nor the sort of numbers that visit comparable reservoirs. There are several reasons for this.

One is the concept, reinforced in the Settlement Agreement that recreation facilities should only be provided if the existing facilities are insufficient for the numbers of visitors: the DWR presents this as 'if they come we will provide facilities' but in reality it is a policy of 'if we don't build, they won't come'.

Secondly, the emphasis is on the facilities around the reservoir whereas improving the facilities around the river from the Diversion Pond downstream to the outlet from the Thermalito ponds is at least as likely to attract visitors as further facilities at the lake.

But fundamentally, any expenditure on recreation is unlikely to be effective so long as decisions are controlled or strongly influenced by the DWR so that they advance the interest of the DWR, which has no real incentive to promote recreation other than compliance with the terms of a license. Indeed, it is in the DWR's narrow interest to limit spending on recreation as much as possible and limit also the number of visitors who act as a distraction, perhaps minor, to the operation of the reservoir. The Settlement Agreement abolishes the Oroville Recreation Advisory Committee (ORAC) and, if it sanctioned by FERC, the DWR will have greater control of funding for recreation which under the terms of the original license they are obliged to provide.

If the Settlement Agreement remains unaltered, we can anticipate continuation of the policy of divide and control followed by the DWR in the past which is commonly characterized by locals as 'throw hay over the fence and let the goats fight for it'. Payments will continue to be only incidentally directed at increasing visitors.

For there to be systematic successful efforts aimed at developing recreation, control of the funding must be in the hands of local elected organizations which have a long-term interest in providing facilities that visitors want. The demand for recreation will change continuously as must the emphasis on alternative recreation facilities. For success, decisions, programs and facilities must be market driven rather than regulation driven.

ORAC was established under FERC regulations. It has not been successful partly at least because the DWR took control of its decisions and reporting to FERC which has been the priority. FERC is in a

position to provide a structure for recreation funding that is market driven. The Community will have to come together to establish an organization that can be responsible for recreation. First steps are being taken, which FERC should encourage by requiring that the Settlement Agreement be renegotiated before any license, long term or one-year is issued.

While the DWR receives a one-year unconditional year after year, there is little chance of willingness to renegotiate the Settlement Agreement in good faith.

## CONCLUSION

In conclusion, after the 2017 spillway incident, the FRRRA sponsored a Petition signed by 6,500 local citizens asking FERC to 'Hold the DWR Accountable'. The total number of voters in 2020 Oroville City elections was 6,907. A copy of this Petition is attached. This protest to the continual issue by FERC of unconditional one-year licenses and the comments in this letter are consistent with the wishes of those signing the Petition. The FRRRA will continue to press for action reflecting the requests of the Petitioners. We believe meeting these requests is fundamental to the safety and recovery of the Feather River Valley, which suffers under the shadow of the Dam, and will make more likely that the full potential of the local communities is realized.

### *Footnote:*

*The main flood control benefits from the Dam are downstream of Oroville where agriculture has flourished, and city levees have generally held since the construction of the Dam. It is often forgotten that Oroville is more negatively impacted by the prospect of inundation resulting from the repeated crises and evacuations than it was from floods down the river valley before the Dam was built. The threat of inundation has been caused by problems at the Dam for which mismanagement by the DWR was partly or wholly responsible. The costs of the evacuations and of the flood damage locally have been borne by local government agencies, businesses and individuals. The injustice of this should be considered when compensation for the costs of hosting the Dam are discussed or negotiated.*

## ATTACHMENT 1

### FOLLOW UP FOLLOWING OCAC FLOOD CONTROL WORKSHOP APRIL 22<sup>ND</sup> 2022

**From:** Robert Bateman <[groberttbateman@gmail.com](mailto:groberttbateman@gmail.com)>  
**Sent:** Friday, April 29, 2022 11:59 AM  
**To:** Nick Saffold <[nsaffold@kearnswest.com](mailto:nsaffold@kearnswest.com)>  
**Cc:** Richard Thompson <[iamcynic1@gmail.com](mailto:iamcynic1@gmail.com)>; Connelly, Bill <[bconnelly@buttecounty.net](mailto:bconnelly@buttecounty.net)>; Genoa Widener <[notjustaspillway@yahoo.com](mailto:notjustaspillway@yahoo.com)>; Erik Johansen <[Erik.Johansen@prezero.us](mailto:Erik.Johansen@prezero.us)>; Rune Storesund <[rune@storesundconsulting.com](mailto:rune@storesundconsulting.com)>  
**Subject:** OCAC Follow up from workshop questions

Hello Nick,

The workshop was informative and a good step forward in providing information to help us all understand the issues relating to the Dam, river and the relevant environmental factors. Thank you for facilitating it.

During the workshop, I asked several questions to which, apart from the one about opening up the levees at the Oroville Wildlife Area, the answers needed elaboration. This may well have been because I did not myself clear or that the information is not readily available and/or complicated. The questions are relevant to our understanding of the information we are given by the DWR and thus to establishing trust in the DWR. So, I am putting them in writing and hope that the answers can be clarified.

1. How are the inflows and outflows at the Dam measured? As I understood the answer it was that estimates are made at several points and that these had been carefully checked in 2017 when the flow was reported as 100,000 cfs and found to be accurate. Would it be possible to provide information about where measurements or estimates are made, what instruments are used and what is the level of accuracy? There are several numbers that have been reported for the maximum releases at the Dam during the 1997/8 flood ranging from 160,000cfs to 180,000cfs. It may be thought that we are being pedantic to ask for these details but court proceedings covering previous floods have shown that some estimates were initially recorded in pencil and then altered. Transparency is necessary for trust.
2. Why did the hypothetical map, shown at the March CAC meeting, of flooding around Oroville with a flow of 225,000 cfs show floods covering about the same area as was covered in the 1997/8 actual flood when the reported outflow from the Dam was reported as 160,000cfs? The answer, as I understood it, implied that the maps shown at the CAC meeting were illustrative rather than based on detailed studies. Is this correct? If so, the study of the impact of high releases proposed by Dr. Storesund, with our

strong support, is absolutely necessary. If there was a scientific basis for the flood map shown at the CAC meeting, is this data available?

3. What outflows from the Dam are used to assess the adequacy of the levees, in Oroville and elsewhere? From all I heard at both the March and April meetings, this is 150,000cfs. Is this correct? I understand that this was the maximum flow used in the original design. Climate change and the aging dam suggest that the appropriate maximum flow is likely to have increased. What steps are being taken to address this point? Apparently, the ArkStorm 2 study group which would provide critical data for forecasting likely rain and snow falls in future has not secured adequate funding. Is the DWR considering supporting this study?

4. In the workshop discussions, climate change was the focus for forecasting future maximum outflows from the Dam. In the past, these have been affected by failures in physical parts of the Dam due to inadequate maintenance or, as Ron Stork pointed out, poor original design and construction. As the Dam ages, the likelihood of such failures grows. The answer given that the DWR was satisfied with the present state of the Dam was not convincing, given the spillway failure which was totally unexpected. The robustness of the Dam was the subject of the Comprehensive Needs Assessment carried out by the DWR after the spillway incident. Despite the limitations of the CNA process, as pointed out by Dr. Storesund and members of the Ad Hoc Committee, the DWR is using the CNA conclusions to estimate risks, plan maintenance and improvements. Can any future workshop on flood control include an open and frank discussion of the adequacy of the CNA process?

While the workshop was really helpful, Matt Mentinck's suggestion that workshops should encourage dialogue on particular points so that there is clarity and any areas of agreement and uncertainty are understood would seem to make sense.

**ATTACHMENT 2**

**HOLD DWR ACCOUNTABLE**

**We, the undersigned, with respect to the Oroville Dam-Project 2100, located in Butte County, CA urge the Federal Energy Commission, to:**

- 1) Order for the safety of the public a comprehensive and totally independent, free from Licensee influence, forensic study of the Project and all its appurtenances, including all auxiliary levees, impounds, power houses as well as CA Department of Water Resources operating and maintenance procedures;**
- 2) Order an opening of the relicensing process to provide just compensation to the local governments and communities that host the Oroville Dam-Project 2100 and provide it with services;**
- 3) Order that recreation facilities be provided on a timely basis that are at least as beneficial as those existing before the spillway debacle with future enhancements guaranteed, especially as regards lower lake level boating, swimming and dam access, and**
- 4) Order DWR to fully underwrite all local outreach efforts of the three downstream County communities that were stigmatized by the Spillway failures and emergency evacuation to help them reverse the negative public impressions the incident created.**

**PRINTED NAME**

**SIGNATURE**

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