



**OROVILLE RECREATION ADVISORY COMMITTEE
P.O. BOX 528
OROVILLE, CA 95966**

August 27, 2018

**Filing of Notice to FERC of Action taken by the
OROVILLE RECREATION ADVISORY COMMITTEE
in reference to the Settlement Agreement
filed March 2006 the matter of LAKE OROVILLE DAM
FERC PROJECT 2100**

Ms. Kimberly Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, Northeast
Washington, DC 20426

Dear Members of the Commission;

The Oroville Recreation Advisory Committee (ORAC) was created By FERC in 1994 in response to failure of the California Department of Water Resources, (DWR) the licensed operator for Project 2100, to live up to its license-proscribed recreation mitigation obligations. These obligations started when DWR began operations in 1968.

As part of ORAC's obligations to the recreating public it represents, at an officially noticed and properly conducted meeting on August 24, 2018, in Oroville CA, ORAC adopted a motion on a 5 to 4 vote that concluded as follows (the resolution in it its entirety is attached, as "Attachment-A"):

- **Now Therefore it is resolved: No new FERC license has been issued, therefore DWR has no obligations under the Settlement Agreement. The procedures for dispute resolution are not applicable because there cannot be a dispute over terms or obligations that do not exist. Without the consideration there is no obligation on the part of ORAC to engage in meaningless dispute resolution. For all the above stated reasons ORAC hereby withdraws from and disavows the Settlement Agreement. The ORAC Chairman is directed to make this resolution known to the Federal Energy Regulatory Commission.**

ORAC submitted letters to FERC dated May 9, 10 and 30, 2018 regarding several motions made at its May 4, 2018 meeting. DWR responded to those first letters on June 19, 2018 and July 5, 2018. In their first letter in response to ORAC's request to continue ORAC into the new license term and eliminate all references to the License Coordinating Unit (LCU) and the Recreation Advisory Committee (RAC) from the Settlement Agreement (SA) and Recreation Management plan, DWR responded that the motions were not appropriate because they were contrary to the provisions of the Relicensing Settlement

Agreement signed in March 2006. DWR's letter suggested that the new entity, RAC, which is provided by the Settlement Agreement gave the public equal weight and authority as the current ORAC committee has. This was misleading at best: ORAC has direct access and right of appeal to FERC. The new entity RAC will only have direct access to DWR or the License Coordinating Unit resulting in a great diminishment of the voice of the people. One of DWR's letters references RAC as merely a "forum".

DWR's letter also referenced the obligations of the license signatories to support and advocate for the Settlement Agreement. ORAC complied with this for a reasonable period of time, but 12 years of unilateral obligation is beyond a reasonable period of time. Consider:

- ORAC entered into the Settlement Agreement in March 2006 with the clear understanding that a new license would be issued shortly.
- Over 12 years later, no new license has been issued and it is unknown when one might be forthcoming -- especially in light of the ongoing analysis of the spillway incident and the multi-year Comprehensive Needs Analysis (CNA) that has just begun.
- Under the Settlement Agreement (Section 1.3.1) the contractual obligations of DWR only begin when it affirmatively accepts a new license. This ongoing condition of 12 years without obligation is one condition with which DWR is totally satisfied. Since DWR has not met its recreation obligations under the old license, it has effectively been meeting no obligations at all.

Therefore, there has been a total failure of consideration in law over a 12-year period that would bind ORAC or any party to the Settlement Agreement with DWR.

Additionally, as stated in ORAC's May 9, 2018 letter, ORAC was disadvantaged in the Settlement discussions as a result of years of its recommendations being mostly ignored by DWR unless they were backed by FERC and the DWR immovable position that there would BE NO ORAC EQUIVALENT in the new license. DWR's adamant stand that there would be no ORAC equivalent in the new license is akin to a gag order for the recreating public and the local community.

Since the time of ORAC's creation, it has been a "David vs. Goliath" contest. Unpaid volunteers representing the recreating public have continually fought to get the promised recreational facilities from one of the largest and most powerful bureaucracies in the state.

That imbalance of power was no more evident than when, almost 15 years ago, in the relicensing agreement settlement negotiations, the DWR chief negotiator proclaimed that the removal of ORAC and substitution of a "Recreation Advisory Committee (RAC)" having no final voting public participation" was a non-negotiable principle. The SA REC plan actually refers to RAC as a "forum" which is basically a gathering in a market place. This is an outstanding example of the arrogance of a state agency against the very people whom they allegedly serve.

A valid case can be made with respect to ORAC and many of the other volunteer "David" entities, that they were negotiating under duress.

During the Settlement Agreement negotiations, the public parties, having been worn down by 50 years of broken promises, reluctantly agreed to a concocted trigger mechanism built into the settlement to

“objectively” signal when new facilities were needed. This concocted system was based on “turn-aways” at admission kiosks, wait times at launch ramps, crowding at camp sites and such.

Fast forward 15 years since the SA negotiations era and virtually everything has changed except DWR’s intransigence and its philosophy of “DON’T BUILD IT AND THEY WON’T COME” and then using the lower attendance figures as justification for not building the proscribed facilities. This circular and economically destructive argument has negatively affected the local community and recreating public since the Lake Oroville Dam was built.

Specifically, the conditions regarding the operation of Lake Oroville have changed so dramatically that the Settlement Agreement could not and did not take the present situation into account and eliminated any prospect that the “trigger mechanisms” would ever be effective or even invoked.

As pointed out in ORAC’s May 9, 2018 letter:

- The recent history of repetitive, deeper and longer droughts causes much what recreation facilities were built to be ineffectual. Because of longer periods of low lake levels, the approximately 40 launch lanes are reduced to 5 to 7 launch lanes during prime lake recreation periods. Drought conditions are now more frequent and expected to continue.
- The lower lake levels render swimming access from campgrounds unavailable and the dryer and hotter temperatures make Lake Oroville SRA camping undesirable at best.
- In order to sidestep certain license-required funding obligations DWR “sub-contracts” its recreational obligations to its sister bureaucracy, the California State Department of Parks. Parks approach to marketing seems to be if revenue falls because admissions drop, raise prices, and then are surprised when attendance goes down. The “free or reasonably priced” recreation that was promised to the community is conveniently pushed aside. No reasonable person will pay \$8.00 parking to take a ten-minute walk through masses of goose droppings on a so-called beach. Attendance numbers decrease because no one wants to pay for a sub-standard experience. No private business would ever be so misguided as to use this business model unless they wanted to fail. Logical deduction tells us that DWR wants recreation to fail so they will no longer have to spend any of the money they reap from the project on the recreational bill of goods (read: booming economy) that was sold to the community over 50 years ago.

The “Spillway Incident” of February 12, 2017, caused the dislocation-by-evacuation of the lives of thousands of people and damages in the billions of dollars to the local and downstream communities. In the Independent Forensic Report responsibility for the failure was primarily attributed to failures by the operator either during construction or management of the facilities afterward. Other recent project failures have included the major fire in the Ronald B. Robie Powerhouse in Thermalito and the river valve failure that resulted in severe injuries to several employees and a significant Occupational Safety and Health Act (OSHA) citation.

As a result, the community has lost trust in DWR to be a safe operator and a new license should not be issued until and unless DWR re-establishes trust with ALL of the entities its actions affect.

DWR has repeatedly stated to members of ORAC that ORAC can only approach FERC through the bi-annual report that DWR sends to FERC (ref: DWR's letter to FERC dated July 5, 2018). ORAC refuted this claim in its July 30, 2018 letter to FERC.

DWR's letter of July 5 further used "adherence to the current license published REC Plan" as a reason to not embark on any of the improvements requested by the community. It is evident that this is a convenient excuse to avoid their responsibilities to the community. A prime example is the projects DWR embarked upon in the aftermath of the Feb 2017 Spillway debacle that closed so many recreational facilities. It was a desperate measure taken by DWR to assuage the deep community fears and resentment in the aftermath of the disaster.

In its May 10 letter requesting improvements in the Forebay and Afterbay areas, ORAC noted that the current improvements requested by ORAC, while made more urgent by the diminished recreational opportunities in the main reservoir, paled in comparison to the Forebay and Afterbay facilities ORAC and the community were promised in DWR's **Bulletin 117-6, Dated December 1966**. ORAC and the community certainly got no forewarning when DWR decided to unilaterally abandon those plans upon which the public relied.

On this aspect alone, DWR has been in breach of the original license (still in effect) for over 50 years.

As a result of the environmental and operational changes that have occurred, the entire recreational use of the facilities at Lake Oroville need to be re-examined and altered to co-exist with the new environmental operation criteria that will need to be implemented -- including new safety and Homeland Security concerns. The just started Comprehensive Needs Assessment (CAN) includes the study of alternatives that could further alter the physical plant as well as reservoir operations that could render the two Lake Oroville Marinas dry canyons. It is inconceivable that any other conclusions can be drawn than that the assumptions and analyses underlying the Settlement Agreement are invalid or out of date.

The public, including equestrians and hikers, have declared their disagreement with items in the settlement agreement that came to light in the aftermath of the reconstruction disruption to trails and their uses. The Equestrians in their filing appended some 3,000 petitioners. The general public in the Oroville area have registered almost 7,000 signatures protesting, among other things failure of DWR to provide the promised (and license required) recreational facilities.

For all the above stated reasons ORAC hereby claims the Settlement Agreement is no longer valid and ORAC disavows any obligation to abide by any of its terms. No new FERC license has been issued, therefore DWR has no obligations under the Settlement Agreement. The procedures for dispute

resolution are not applicable because there cannot be a dispute over terms or obligations that do not exist. Without the consideration there is no obligation on the part of ORAC to engage in meaningless dispute resolution.

For all the above stated reasons ORAC hereby withdraws from and disavows the Settlement Agreement.

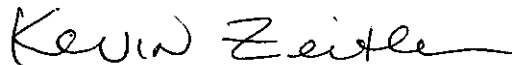
The ORAC Chairman is directed to make this resolution known to the Federal Energy Regulatory Commission.

This letter has been reviewed and approved by those majority members voting for this motion at ORAC's August 24, 2018 meeting, including representatives of these ORAC seated organizations:

- Butte Sailing Club
- Citizens for Fair and Equitable Recreation Use of Lake Oroville
- Lake Oroville Fish Enhancement Committee
- Butte County
- Butte County Citizens for Fair Government

Thank you for your kind and earnest attention to this request. If you have any questions, please contact us at the above address.

Sincerely,



Kevin Zeitler, ORAC Chair

Attachment

Cc's; see below

Attachment A

Resolution Presented at the ORAC meeting of August 24, 2018

- Whereas: ORAC entered into the Settlement Agreement in March 2006 with the clear understanding that a new license would be issued shortly.
- Whereas: Over 12 years later no new license has been issued.
- Whereas: Under the Settlement Agreement (Section 1.3.1) the contractual obligations of DWR only begin when they affirmatively accept a new license. This never occurred.
- Whereas: There is, therefore, a total failure of consideration over a 12 year period that binds ORAC or any party to the Settlement Agreement with DWR.
- Whereas: For over 50 years DWR has been in breach of the original license, by failing to abide by the DWR Bulletin 117-6.
- Whereas: the conditions regarding the operation of Lake Oroville have changed dramatically; the Settlement Agreement could not and did not take the present operational conditions into account.
- Whereas: The new physical and environmental reality was never studied and Climate change effects and new flow criteria being implemented for all major rivers leading to the Delta will most likely make Lake Oroville a dead pool every other year.
- Whereas: The entire recreational uses of the facilities at Lake Oroville have to be reexamined and altered in order to co-exist in any meaningful manner with the new operation criteria that will certainly be implemented. This must include safety and Homeland Security concerns.
- Whereas: The "Spillway Incident" caused the evacuation of 180,000 people and damages in the billions of dollars to the local and downstream communities; this was not the only incident of DWR failures of consequence in the last ten years.
- Whereas: The ongoing failures in the area of Public Safety including the spillway failure, the destruction by fire of the Ronald B. Robie Generating Plant, failure of the river valve in the Hyatt Power Plant have created a lack of public trust in DWR's ability to adequately safeguard the public.
- Now Therefore it is resolved: No new FERC license has been issued, therefore DWR has no obligations under the Settlement Agreement. The procedures for dispute resolution are not applicable because there cannot be a dispute over terms or obligations that do not exist. Without the consideration there is no obligation on the part of ORAC to engage in meaningless dispute resolution. For all the above stated reasons ORAC hereby withdraws from and disavows the Settlement Agreement. The ORAC Chairman is directed to make this resolution known to the Federal Energy Regulatory Commission.

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