

## **FEATHER RIVER RECOVERY ALLIANCE: UPDATE OF ACTIVITIES**

(February 20<sup>th</sup> 2023)

### **Overview**

When we started efforts to hold the DWR accountable after the spillway incident, we knew that this would involve constant pressure over many years.

The difficulties with the Dam stem from the way it was financed. Governor Pat Brown could not get the votes to finance it and resorted to forming and promoting State Water Contractors (SWCs) in water consuming areas. The SWCs raised the capital for the Dam based on receiving water free while being responsible for maintenance. However, the forecasts for water availability were optimistic so that the SWCs have received much less water than expected. Thus, they are reluctant to pay for maintenance unless this is required by regulations, and now the Dam is 60 years old, this includes significant costs for renovation and modernization. This governance structure results in a reluctance to investigate the infrastructure needs realistically and there is an incentive to put off necessary repairs so that the Federal and/or the State government pay after a crisis. The new spillway cost well over \$1 billion, at least twice the cost of a planned repair of the original. The SWCs have power and responsibility without accountability.

Not only have the SWCs received less water than contracted but also the Community has received less benefit in terms of recreation and tourist facilities than was promised and we have been faced with significant uncompensated costs, such as those related to evacuation.

This combination of inadequate maintenance, a disgruntled local community and an experimental inappropriate relicensing procedure has resulted in a continuing delay in FERC relicensing the dam when the original license expired in 2008.

The governance structure does not naturally provide sound budgets or a simple way to obtain the funds necessary to maintain the aging infrastructure. The main priority for the State Water Project, encouraged by the SWCs, is the dubious \$9 billion delta tunnel, not ensuring that dams and the levees are fit for purpose.

It is really difficult to find out who is responsible for what or to hold anyone accountable for anything – although Wade Crowfoot, the Secretary of the Natural Resources Agency, at an early Oroville Dam Citizens Advisory Commission (OCAC) did say that he would hold himself responsible for our safety, which was encouraging. For instance, nearly two years after the lack of accurate inundation maps for the likely recurrence of high releases from the Dam was pointed out in a presentation made by the Berkely Center for Catastrophic Risk Management (CCRM) who made a presentation to the OCAC at our request, we still do not know who is responsible for providing these, let alone getting them developed.

### **Approach**

Since the last update in 2021 we have continued to build local relationships, particularly with Butte County and the Chairman of the Board of Supervisors, Bill Connelly, who for over 10 years, has been working tirelessly with some frustration to convince the DWR that the Dam must be managed with safety as the top priority and make sure that the local communities are treated fairly, especially with regards to the provision of recreation facilities consistent with the promises made when the Dam was built.

We are working with the Feather River Recreation and Parks District (FRRPD), Oroville City and the Oroville Chamber of Commerce to help develop, together with Butte County, a united position for any renegotiation of the chronically delayed relicensing of the Dam.

We have also sought and received the support of our local State representatives, Senator Jim Nielsen and Assembly Member James Gallagher whose efforts to reduce the probability of dangerous flood events such as those in 1985, 1997/8 and 2017 have been necessary and effective.

We are now, through the OCAC, in regular constructive contact with the Natural Resources Agency and its Secretary Wade Crowfoot who is ultimately responsible for the operation of the Dam and thus for our safety.

We have also relied on help from members of the Comprehensive Needs Assessment (CNA) Ad Hoc Committee. The CNA, a self-assessment by the DWR of the risks associated with the Dam, was an inadequate and subjective response to spillway incident. The Ad Hoc Committee, in which a member of the FRRPD participated, was established by Senator Nielsen and Assembly Member Gallagher to comment on the CNA proceedings. It included citizens who have professional and long-term knowledge of the operation of the Dam.

Through these relationships we have advanced the cause of seeking safety and fairness primarily in the following ways.

### **FERC**

After 15 years since the expiration of the original 50-year license to operate the Dam, FERC has not issued a long term license to the DWR for the operation of the Dam. Instead, the DWR operates on a continually renewed unconditional one year license. We have tried to find out the reasons for the delay without success. The Natural Resources Agency told us that it was due to FERC procedures, which seems unlikely. The reasons are a combination of:

- concern about the spillway incident and the way FERC was deceived by the DWR's previous assertions about ability of the emergency spillway to handle overflows and thus continued lack of trust in the DWR,
- the unwillingness of the DWR to bring the Dam up to current standards -particularly the lack of a low-level release and the adequacy of the emergency spillway which although now protected from collapse still is not hardened to the river
- issues with the controversial Settlement Agreement particularly the fact that the County has never signed it, has a formal Intervention in place and will likely sue if a long-term license is issued before their outstanding court case is settled.

The FRRPD Intervention submitted in November 2019 with the support of the 6,500 signatures on the original petition to the 'Hold the DWR Accountable' was denied by FERC on the grounds that the deadline for submitting petitions expired in 2011. In response to this, our intervention, which dealt with safety concerns, was joined with the established Butte County intervention which deals primarily with lack of a CEQA as part of the flawed Alternative Licensing Procedure. It will now be possible for the lawyers representing the County to cite information from the FRRPD intervention in their court cases relating to the relicensing.

The FRRRA have also continued to file protests with FERC. Two will be posted on the FRRRA web site ([www.notjustaspillway.com](http://www.notjustaspillway.com)):

- In February 2022 the FRRRA pointed out there is no evidence that the DWR has followed instructions in the FERC or Water Code Manuals in providing early warning to parties who might be affected by unplanned high releases from, or collapse of, the dam and inspecting the downstream channel conditions.
- In May 2022 protesting the one-year licenses being issued to the DWR without conditions namely a supplementary Environmental Impact Review, renegotiation of the Settlement Agreement and agreed payments to the host communities.

The FRRRA continues to send and encourage our allies to send FERC copies of relevant communications with the DWR and the OCAC. We will continue to do this and believe that this is one factor discouraging FERC from issuing a long-term license at this stage.

### **SETTLEMENT AGREEMENT**

The Alternative Licensing Procedure (ALP) used in 2006 by the DWR to relicense the DWR to operate the dam for another 50 years included a Settlement Agreement signed by multiple parties with interests ranging from fisheries to recreation. This specified among other things the support that would be provided to the Community for recreation facilities and cost recovery. This agreement comes into effect when FERC issues a 50 year license. The provisions agreed in 2006 by Oroville City and other local organizations, but not Butte County, were not consistent with the original promises made when the Dam was originally commissioned. Also, no provision was made in the agreement for costs to the community, such as those associated with the 2017 evacuation which amounted to several million dollars, that resulted from inadequate or, perhaps, negligent operation of the Dam.

One of the objectives of the FRRRA as part of its mission to 'hold the DWR accountable' is to seek a renegotiation of the Settlement Agreement. To be effective, this will require the community to put forward a united front. To this end the FRRRA is working with the Feather River Recreation and Parks Department (FRRPD), the City of Oroville and the Oroville Chamber of Commerce to send a letter to FERC protesting the issue of any license to the DWR before certain aspects of the Settlement Agreement are renegotiated. The FRRPD has agreed to this, and the City and Chamber are expected to sign on shortly. Butte County has agreed to co-operate. The joint community and DWR Oroville Recreation Advisory Committee (ORAC) established by FERC in 1992 in response to community dissatisfaction, which will be abolished under the Settlement Agreement, has already withdrawn from the Settlement Agreement with the encouragement of the FRRRA.

### **OROVILLE DAM CITIZENS' ADVISORY COMMISSION (OCAC)** (Website:[www.resources.ca.gov](http://www.resources.ca.gov))

The FRRRA has been active in the OCAC from its first meeting. The FRRRA has had a member on the Commission from the onset, Genoa Widener (now Northern) from 2022 and Robert Bateman since Genoa moved to Cottonwood. The FRRRA commissioner, a Butte County appointee, is the only Commissioner who is not either employed by a government agency or an elected official. Genoa and Robert have been strong independent voices seeking to fulfill one of the FRRRA's objectives which is to establish trust in the DWR. The Commission has the potential to encourage transparency and dig up the information needed for the resolution of disputes and misunderstandings on a business-like basis. But this will be an uphill battle despite the thoughtful and knowledgeable chairmanship of the Secretary of Natural Resources.

The OCAC has reviewed many issues, relating to Dam operations and safety or risk. The FRRA has been particularly focusing on:

- Risk: The Independent Forensic Team (IFT) 2018 report by three distinguished forensic engineers on the lessons that should be taken from the spillway incident characterized the DWR's approach to risk as complying with regulations rather than demanding safety. At the FRRA's request Dr. Rune Storesund made a presentation 'Community Safety Following Comprehensive Study' to the OCAC in May 2021. This has been the only presentation to the OCAC by an expert truly independent of the DWR. Unfortunately, his recommendations, particularly that design assumption audits and life cycle based maintenance management are essential to the understanding of risk, were not discussed in any detail by the commission. Rather than undertake fundamental objective studies such as these, the DWR basically seeks to mitigate regulations while providing subjective assessments and assumes that if the regulations are observed to the letter, they have done their job. The FRRA points this out to FERC and the OCAC whenever the opportunity arises. Until this approach changes, it will be difficult to trust the DWR to put proper priority on our safety.
- Inundation: Since the dam was in place, Oroville has been largely spared seasonal floods, which anyway were more damaging to downstream communities than to Oroville. But, in place of floods there have been two recent threats, in 1998 and 2017, of inundation when control of the outflows has been lost arguable because of the failures of the DWR. Trading manageable floods for the threat of uncontrolled inundation is not, has not been and, unless the way the dam and reservoir are managed change, will not be a good bargain.

The FRRA has contributed to two concrete steps being taken to lessen the risk of flooding in Oroville which will take at least two years to complete.

- First after 4 years of pressure, it has been agreed that the 12,000 acre Oroville Wildlife Area immediately downstream from Oroville City limits will be opened up to the river and restored to its role as a flood plain which it played before the Dam was built.
- Second, a process has been started whereby the Oroville Levees laid down in 1906 will be properly assessed and if necessary brought up to modern standards. These levees have been ignored for years, indeed have become orphans for which no agency took responsibility. Unless they are brought up to standard in the next three years most of the city is likely to be included in the flood plain.

Our main initiative on inundation has been to find out whether there are accurate inundation maps for releases from the dam of between 150,000 cfs and 300,000cfs and if not to make sure they are immediately commissioned. There has been some flooding with releases of 150,000cfs but this is well mapped and manageable. There are maps for the complete collapse of the dam which show flooding down 50 miles south of Sacramento and parts of the Bay Area. Sacramento and the valley would be more heavily affected than Oroville. The city and area under something like 250' would be inundated but the higher ground would be above water level whereas much of Sacramento would be 20' under water. However, no one has been able to show us or the OCAC accurate maps for releases over 150,000cfs. It is highly likely that these will occur, perhaps even this year if the storms forecast for late February and March are accompanied by snow melt. On December 30<sup>th</sup> 1997 inflows into the lake were forecast to be over 400,000cfs within 24 hours but fortunately it stopped raining. The actual releases then are officially reported to have been 162,000cfs but we know estimates of outflow and inflow are subject to significant margins of error and numbers as high as 185,000cfs have been talked

about for 1997/8. The probability of high releases is higher with the atmospheric river storms which climate change is expected to make stronger and more likely.

Our hunt for accurate inundation maps for high releases started when Dr. Rune Storesund pointed out that they were not available in his presentation nearly two years ago. These are needed for evacuation planning, preparations for protection and for cost benefit analysis for maintenance and improvement projects at the dam and levees. It can be argued that the DWR has a regulatory and 'duty of care' responsibility to make sure they are available especially because they can be predicted. Dr. Storesund offered to develop them and the DWR told him what grants might be available. The FRRRA offered to raise \$25,000 to support his application but the DWR offered nothing and gave the application token support. The grant application was not approved, we believe because the DWR had not supported it convincingly. The OCAC did establish a side meeting of Commissioners and the DWR to review inundation maps. One meeting was held in September when the inaccuracy of the high release maps prepared for FERC after the spillway incident were agreed to be based on questionable assumptions – they were for 'sunny' days and assumed that highway 70 past Oroville would act as a levee. A second meeting was planned for December but postponed. We have asked several times why the DWR is not responsible for providing these maps. We have received no clear answer, but the implication is that they believe that they are not required by the regulators (one of which is the Department of Safety of Dams (DSOD) part of the DWR!). We have also asked which agency is responsible for preparing the maps if the DWR is not. Again, we have been given no answer. In this situation, we are considering raising money from the community and commissioning Dr. Storesund to prepare inundation maps for high releases for Butte County so that we can be prepared for what will probably happen.

### **OCAC THREE YEAR REPORT TO THE LEGISLATURE**

The OCAC is required to report on its activities every 3 years. The draft report covered what was discussed at the meetings– mainly presentations by the DWR or by dam related organizations with links to the DWR. The draft report did not though deal with matters that were brought up but not taken forward. The FRRRA submitted a paper on these issues with recommendations which will be published as an appendix. This will be available shortly on the OCAC section of the Natural Resources Agency website when the 3-year report is submitted to the legislature.

### **FRRRA FINANCES AND PLANS**

In the last 2 years the FRRRA raised \$18,000 from members and spent it on consultants and lawyers. If there is a project that needs financial support, such as being a last resort in obtaining accurate inundation maps, we will raise whatever money is needed; but we try to use our own efforts and pro bono professional support for the routine work of applying pressure and building leverage to achieve our objectives. This work will continue until we are confident that the DWR can be trusted to give safety its proper priority and there is a fair deal for the downstream communities.

Prospectively, so that accurate inundation maps for high releases in the Butte County area are available to those who need them, we plan to run a campaign to raise up to \$50,000 unless we are satisfied that the DWR or some other government agency will immediately undertake to procure these maps.