



**FEATHER RIVER
RECOVERY ALLIANCE**

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Ms. Kimberley Bose,
Secretary, FERC
888, First St., N.E.
Washington, D.C. 20426

October 29th, 2020

COMMENTS ON THE RELICENSING PROCESS AND A COMMENT REGARDING, AND IN RESPONSE TO THE DENIAL OF LATE INTERVENTION FILED ON NOVEMBER 9TH, 2019 BY THE FEATHER RIVER RECOVERY ALLIANCE (FRRA) IN THE MATTER OF PROJECT 2100 LAKE OROVILLE FEATHER RIVER DAM CALIFORNIA DEPARTMENT OF NATURAL RESOURCES APPLICATION FOR RELICENSING

(To be e filed at FERC by the Feather River Recovery Alliance October 29 2020)

The Feather River Recovery Alliance is electronically filing the attached comments on the FERC website.

Respectfully

Robert Bateman
Secretary

ATTACHMENT 2

LETTER TO FERC REGARDING THE LIMITATIONS OF THE DWR COMPREHENSIVE NEEDS ASSESSMENT
October 5, 2020

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Dear Secretary Bose,

Re: Project 2100 – Oroville Dam – FERC No. 2100

This letter was being prepared for submission in mid-September but due to the wildfires in Butte County we were unavoidably delayed. Even though a comprehensive critique of the final CNA report, copies of which we received a week ago, is being prepared, we are sending this interim notice of our concerns about the limitations of the approach the DWR is taking to risk as reflected in the CNA report.

On August 28th, the DWR filed the completed Oroville Dam Comprehensive Needs Assessment (CNA) Project Report. This project was underway when the Feather River Recovery Alliance filed an Intervention in the Oroville Dam Relicensing process. This intervention expressed reservations about the scope and methodology of the CNA process. These reservations appear to have been justified.

Although we have not seen the final report, based on the information provided at and discussions during the Ad Hoc Committee and Citizens' Advisory Commission (CAC) Meetings, the report represents a continuation of the myopic approach taken by the DWR to risk analysis which resulted in the partial collapse of the main spillway in 2017 and the undermining of the emergency spillway as well as the crises in 1997 and 1985.

The DWR claims in the letter accompanying the CNA report that the project was comprehensive, which it was not for reasons outlined in our intervention, and implied that it addressed the concerns of the Ad Hoc Committee members, which it did not.

As an example of the questions raised by Ad Hoc Committee members that have not been fully addressed, please see below (Attachment 1) the list of questions sent to the DWR in June by Dr Rune Storesund of the UC Berkeley Center for Catastrophic Risk Management. Dr. Storesund is a member of the Ad Hoc Committee. There are numerous other issues raised by Ad Hoc Committee members, including one that has been previously raised by FERC relating to the emergency or auxiliary spillway, which have not been addressed. Also, the concept that the earthquake risk can be assessed without detailed seismic study is not encouraging, neither is that conclusion the decrepit spillway gates do not represent an immediate risk. The risk of failure at the gates would be heightened by an earthquake.

The DWR says that it will be working with the Ad Hoc Committee members to complete a public version of the report. The issues of Ad Hoc Committee members are such that they cannot be properly dealt with without significant changes in the report; so, it is inappropriate to view it as final or complete.

This conclusion is supported by the proceedings of the CAC virtual meeting held on August 21st during which Secretary Wade Crowfoot of the California Natural Resources Agency, the Chairman of the CAC, said that the CNA report should not be finalized until the issues raised by Ms. Widener had been addressed and resolved. A copy of the comments Ms. Widener made to the Commission, which include details of unresolved questions raised by Ad Hoc Committee members, is attached (Attachment 2).

We are hopeful that the Commission, if it is operated as specified in SB 955, the legislation which established it required, can provide valuable oversight alongside the FERC regulation so that the risks associated with the Dam are minimized. A copy of Ms. Widener's follow-up letter to the Secretary of Natural Resources who acts as Chairman of the Commission, which has been acknowledged but not yet addressed, is also attached (Attachment 3). This points out the superficial way in which the Ad Hoc Committee has been dealt with by the DWR and recommends a procedure for future meetings consistent with the legislation. This is not the way in which the meetings to date have been handled.

Contrary to the impression given in the DWR's letter of August 28th to Mr. Frank Blackett, the CNA process to date has done little to allay the concern of independent professionals and the downstream communities that the Dam will continue to be operated in future in the same short term and reckless way that it has been in the past. On the contrary, it has brought together those seeking to minimize the risks with the Dam in the long term who know that fundamental reforms are needed.

We urge you to consider the recommendations made in our Intervention before issuing a long-term license to the DWR for the operation of the Dam.

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The ruling dated October 5, 2020 stated that ‘Movants for late intervention are required to show good cause why the time limitation should be waived’ and that the FRRRA had failed to ‘demonstrate that good cause exists’.

The FRRRA is seeking to intervene in the relicensing process after the expiration of the deadline because events subsequent to the deadline have demonstrated that the dam has not been managed responsibly in a way in which the downstream communities can have confidence. The response of the DWR to the 2017 spillway crisis indicates that, **without effective intervention by the community, the DWR will continue operate the Dam in future with the same attitude to risk that resulted in the 1985, 1997 and 2017 crises, which but for luck would have been catastrophic. In other words, the public only became aware of the issues of inadequate maintenance and management practices after the time to file interventions had already passed by years. After revising the previous Intervention, the FRRRA may submit a new version of their Intervention addressing the new issues raised by the denial of the previous intervention.**

The documents supporting the FRRRA intervention spell out the history of the dangers to which the downstream communities have been exposed in the past culminating in the evacuations in 1998 and 2017. In both years, poor management was a major contributor to both crises as the FERC After Action Panel (FAA) and Independent Forensic Team (IFT) reports establish. **Unless there is a fundamental change in the approach the DWR takes to risk, supported by firm, independent regulation, there will be a catastrophic event caused by poor management of the Oroville Dam within the foreseeable future. We believe that it is our responsibility to do all we can to minimize the risk of this by pursuing an intervention to make the risk issues and management failures have been properly addressed – which we believe is not the case based on the history of the relicensing review process that has been inappropriately controlled by the DWR.**

RELEVANT EVENTS THAT HAVE OCCURRED AFTER THE DEADLINE

1. Main Spillway Collapse

The collapse of the spillway was completely unexpected. Why was this? It was because the DWR in assessing the risk of failure relied on the judgement of its professional staff, without reference to the original design specifications or physical testing.

2. Erosion of the Emergency Spillway

The extent of this erosion was unexpected. Serious erosion was anticipated in the original specifications, although the DWR failed to acknowledge this when reporting to FERC after the Petition in 2005 to FERC pointing out the danger. The DWR told FERC then that the emergency spillway was fit for purpose – something that they maintain for the renovated emergency spillway despite the lack of metaling below the new apron. The notes from the meeting at the

Visitors Center during February show that the professional engineers and geologists had concerns about using of the emergency spillway to minimize the damage to the main spillway but their opinion was overruled by a committee of 3 people in Sacramento. The extensive damage to the emergency spillway after short use and low flows was completely unexpected by the decision makers. No one has been held accountable.

3. DWR Response

In responding to the spillway incident in 2017 the DWR has not addressed all the concerns raised in the IFT or FAAR nor has it acted in a way to give the downstream communities confidence that there will not be a recurrence of potentially catastrophic incidents.

- The DWR has not released their forensic investigation and findings on the spillway failure and erosion of the emergency spillway. Why not? The DWR publicly rejected the ITF findings but refuses to disclose with which elements of the report they disagree or why. Why is this? The DWR is using the same flawed methods and people as were used prior to 2017 ignoring the IFT report.
- The Comprehensive Needs Assessment (CNA) commissioned alongside the FERC Part 12 Level 2 inspection offered some hope for a changed approach to risk. There has indeed been some change and a lot more attention has been given to the possibilities for future failures and their consequences than after the 1997 incident.

However, the 'risk informed' method of analysis and decision making as it was used in the CNA is limited and can not be expected to give the downstream communities a great deal of confidence. A brief commentary on this method by Dr. Rune Storesund of the UC Berkeley Center of Catastrophic Risk Management (CCRM) is attached (Attachment 1).

The FRRR letter to FERC dated October 5th, 2020 (Attachment 2) sets out our present reservations about the methodology and conclusions of the 'final' CNA report and the casual way in which the community representatives in the process have been treated. In the next few months, there will be serious independent, comprehensive criticism from qualified sources of the CNA process and conclusions.

The conclusion that:

'No unacceptable risks were found and therefore no immediate action needs to be taken' was not agreed without reservations by members of the Independent Review Board (IRB) and was and is being challenged by members of the Ad Hoc Committee representatives including Dr Rune Storesund.

- There has been no discernable change in the DWR's approach to safety which was described in the FAAR as being designed to satisfy regulations rather than to minimize risk. The CNA report put forward a range of recommendations for increasing the robustness of the Dam. Those being seriously considered are those that meet the regulatory requirements at minimum cost. As has been the case in the past, it appears that planned expenditure on risk reduction is going to be limited by what the State Water Contractors (SWC) are prepared to pay to meet regulations and the long list of

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3. Reservoir Management

The request that strategic decisions taken under a revised Water Control Management (WCM) be subject to review by independent engineers including a local representative. The CAC might develop into a means for achieving this. Any revision to the WCM must give priority to safety rather than water provision.

We request that a community representative is appointed to the committee overseeing the revised WCM

Since the dam is out of compliance with the DOSD requirement to have the outlet capacity to evacuate water from the lower reservoir during an emergency event, we request temporary WCM accounting for this condition. The installation of a lower outlet must be a condition for any extension of the 10 year license.

4. Surcharge on Water to set up a Fund to pay for Damages caused by Negligence

We request the conditions of any relicensing include a revision in the State Water Contract extension section 4.4.4 to safeguard California taxpayers from paying for damages resulting from the operations and maintenance of Oroville Dam.

5. Requiring that DWR provide adequate funding for mandated community organizations can employ appropriate experts and staff to represent their interests.

No revision.

6. Transparency in dealing between the SWC and DWR

We request that the conditions for relicensing include publication of:

- *Minutes of all meetings between the DWR and SWC relating to Oroville Dam*
- *DWR's 2 year budget, 5 year plan and long term plan be made available to the CAC*
- *Relevant details of the projects listed in these reports, including risk ranking on the O&M asset management matrix.*

CONCLUSION

We believe that unless the measures requested are included in any relicense, our lives and livelihoods will continue to be in jeopardy every 10 to 15 years when there are heavy rains. History confirms that the management of the lake and dam have not been sufficiently robust to deal with what have been routine weather conditions which will only worsen with climate change.

Neither the regulations nor the discipline in following regulations have been adequate in the past.

The influence in the background of the SWC has warped the decision making unreasonably towards the provision of water rather than safety for the downstream communities and the downstream environmental concerns and impacts on the entire Sacramento River Basin and the San Francisco Bay.

Without serious consideration of the requests we are making in the finalization of the relicensing, history will repeat itself with the real risk of inundation of the lower Feather River Valley and parts of Sacramento and the entire riparian system including port facilities.

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