

May 11, 2012

Secretary Kimberly D Bose
Federal Energy Regulatory Commission
888 First Street NE
Washington DC 20426

Subject: Districts' Comments on the Study Dispute Resolution Panel's
May 4, 2012 Findings and Recommendations for the Don Pedro
Project Study Dispute, P-2299-075

Dear Secretary Bose,

On May 4, 2012, the Study Dispute Panel ("Panel") for the Don Pedro Project, FERC No. 2299, issued its recommendations related to the Notice of Study Dispute requested by the National Marine Fisheries Service ("NMFS") pursuant to 18 CFR 5.14 of Federal Energy Regulatory Commission ("FERC" or "Commission") regulations. On behalf of the co-licensees, Turlock Irrigation District (TID) and Modesto Irrigation District (MID) (collectively, the "Districts"), we are providing these comments on the Panel's report and recommendations. On February 21, 2012, the Districts filed comments with the Commission on NMFS' Notice of Dispute and the Districts believe these comments are still germane to the Director's decision-making.

The Dispute Conference was held on April 17, 2012 in Sacramento and the Districts want to extend their appreciation to the FERC staff, NMFS, and especially the three-member Panel for conducting a professional and efficient conference. Our brief comments on the Panel's report are provided below.

[1] Page 2, 1st full paragraph -- The Panel's report states that "[w]ater releases at Don Pedro Dam also deliver flows to La Grange Dam for release to the Tuolumne River below La Grange Dam." To be clear, the purpose of the Districts' La Grange diversion dam is to raise the level of the Tuolumne River in order to divert water by gravity means from the Tuolumne River for use by the Districts in meeting their obligation to provide irrigation and M&I water to their service territories. Waters released at Don Pedro Dam not needed for this purpose are passed downstream in accordance with safe and responsible dam operating practices at La Grange dam.

[2] Page 7, 1st full paragraph -- The Panel's report states that there are "declining populations of ESA-listed anadromous fish" on the Tuolumne River. The Districts would point out that there is no evidence that this is the case. The only ESA-listed anadromous species known to occur on the lower Tuolumne River is *Oncorhynchus Mykiss* ("O. mykiss"). Early summer snorkel surveys conducted in June/July have been done in most years since 1986 except in years with high flows (1995, 1998, 2005, 2006, and 2011) that precluded the surveys. Based on fish surveys conducted by the Districts from 1986 to 1995, O. mykiss were largely absent from the river. Higher numbers of O. mykiss have been observed beginning with increased summer flows in the 1996 FERC Order. Although rates of anadromy are generally very low, the overall O. mykiss population levels documented in intensive snorkel surveys carried out under the April 3, 2008 FERC Order from 2008 through 2011 likely represent a substantial increase compared to the period prior to 1996.

[3] Page 7, 2nd and 3rd full paragraphs -- The Panel's report indicates that Appendix B of the FERC Determination dated December 22, 2011 requires the consultation process described on page one as "apply[ing] to the finalization or major refinement of every study plan" [emphasis added]. This is not the case. The Workshop Consultation Process applies only to the Districts' proposed studies that provide for consultation via workshops for certain decision points outlined in the FERC-approved study plans. This applies only to W&AR-2, -5, -10, and -14. On March 5, 2012, in accordance with the directive contained on page one of Appendix B of the FERC Determination, the Districts provided to relicensing participants and FERC staff for their review and comment a proposed *WORKSHOP CONSULTATION PROCESS ON INTERIM STUDY PLAN DECISIONS* (see Attachment A). The draft Workshop Consultation Process included the list of studies the ongoing consultation process would apply to (consistent with the Districts' Revised Study Plan and FERC's Determination), the dates of the specific Workshop meetings, and the process for dealing with any lack of consensus. A meeting was held with relicensing participants on March 20, 2012 to review and discuss the proposed protocols. No comments have been received suggesting any material change to the protocols, and the Workshop Consultation protocol is now considered final.

[4] Page 8, NMFS Study Request No. 1 -- The Districts do not agree with the Panel's finding that the Don Pedro Project may have direct effects in the immediate area below La Grange Dam. The Districts make decisions about the operation of La Grange Dam under all flow conditions based strictly on the safe and responsible operation of La Grange Dam, including when and how much water to divert, and from what outlet at La Grange dam to pass water downstream. The effects on resources immediately below La Grange Dam are due to the decisions made about the safe and effective operation of La Grange Dam. Studying the bathymetry or the fish resources in the area immediately below La Grange Dam, for example, would not inform the development of license conditions for the Don Pedro Project. Certainly,

resources below La Grange Dam may be cumulatively affected by the operations of Don Pedro, La Grange and CCSF's upstream Hetch Hetchy Project via effects on Tuolumne River hydrology and the Commission has already indicated it intends to consider such cumulative effects. The Districts believe that existing information, combined with the Operations Model of W&AR-2, will provide a substantial database to facilitate FERC's consideration of cumulative effects.

Potentially even more germane to the Director's decision related to NMFS Study Request No. 1, the Districts do not believe that this dispute has any relationship to NMFS' Section 18 authority at the FERC-licensed Don Pedro Project under the Federal Power Act ("FPA"), nor has NMFS adequately described how the its Study Request No. 1 pertains "directly to the exercise of their authority" under Section 18 as required under Section 5.14 of the ILP regulations. There is no description provided by NMFS of how studying the direct effects of La Grange diversion dam operations on resources immediately below La Grange dam (see NMFS Request No. 1, Element 6), or knowing the "dependable capacity" of the La Grange powerhouse, or the amount of storage in La Grange pool, pertains to formulating a fishway prescription at the Don Pedro Project. Therefore, NMFS' study dispute related to NMFS Request No. 1 does not reach the minimum threshold of being related to the exercise of their Section 18 authority at Don Pedro.

[5] Page 13, all paragraphs -- The Districts would just like to clarify that it stated at the conference that very little data exists on the flow through the different outlets at La Grange Dam and, therefore, there is not sufficient data to prepare any sort of flow record related to these individual outlets. The Districts also indicated that they were willing to do the other flow analyses requested by NMFS, but only to the extent that the data are sufficient to allow a reliable and meaningful analysis.

In closing, the Districts want to again recognize and acknowledge the professional approach and conduct of each of the Panel's members in the performance of their challenging task.

Sincerely,



John J Devine P.E.
Project Manager

Attachment A: *Workshop Consultation Process on Interim Study Plan Decisions*

WORKSHOP CONSULTATION PROCESS ON INTERIM STUDY PLAN DECISIONS

As part of certain studies to be undertaken in the Don Pedro Project relicensing, the Districts had proposed a series of workshops to share and discuss relevant data with Relicensing Participants (RPs). FERC has recommended that the Workshop Consultation process be formalized. In accordance with Appendix B of FERC's December 22, 2011 Study Plan Determination, the draft workshop consultation process outlined below has been developed to provide guidance for the decision-making process involved within the following study plans:

- W&AR-2 (Project Operations Model): Hydrology Workshop
- W&AR-5 (Salmonid Population Information Synthesis): Literature/Data Review Workshop and Conceptual Model Review Workshop
- W&AR-6 (Chinook Population Model): Conceptual Model Review Workshop and Modeling Approach Workshop
- W&AR-10 (*O. Mykiss* Population Model): Conceptual Model Review Workshop and Modeling Approach Workshop
- W&AR-14 (Temperature Criteria Assessment): Water Temperature Evaluation Criteria Workshop

The purpose of the eight workshops is to provide opportunity for RPs and the Districts to discuss relevant data sources, methods of data use and development, and modeling parameters at key points in the execution of these study plans. The goal of the workshops is for RPs and the Districts to reach agreement where possible after thorough discussion of data, methods and parameters. Consensus on decisions dealing with data acceptability, or study approaches or methods can only be achieved by the active and consistent in-person attendance and participation of interested Relicensing Participants. Additional workshops beyond those already specified above may be held as agreed to between the RPs and the Districts.

FERC has also directed the Districts to formalize the workshop process to define how interim decisions on model inputs and parameters will be made. To promote clear communication and informed participation, the Districts will make a good-faith effort to provide two (2) weeks before each workshop, in electronic format, information and presentation materials to be discussed at the workshops. For studies that involve resource modeling, presentation materials will be tailored to the audience at a level that assumes familiarity with the resource issues being addressed. To promote a common understanding of terms, a glossary of definitions will be prepared prior to each initial workshop, updated and expanded upon periodically, and included in the final study report. Prior to the initial workshops, the Districts will also prepare a logic diagram of the study steps from data selection through model development and numerical procedures to model scenario evaluation. This study "process diagram" will aid in promoting a common understanding of the step-wise approach being used in model development.

Following each workshop, draft meeting notes of the consultation workshop will be distributed to participants within approximately eight (8) working days. The notes will identify areas where participants reached agreement on data, methods and/or parameters, areas where there is disagreement among participants, and action items for any future meetings. Following a 30-day comment period, the Districts will file with FERC a revised version of the consultation workshop

notes describing areas of agreement, areas where agreement was not reached, copies of comments received, a discussion of how the Relicensing Participant comments and recommendations have been considered by the Districts, as well as the rationale for the Districts not adopting any Relicensing Participants recommendations.

The proposed schedule for workshops is included below. All meetings will be held at MID offices in Modesto.

March 2012**Mar 20** - 1:30 pm – 4:30 pm

Don Pedro Project Relicensing - Workshop on Consultation Process (as per Appendix B of FERC's Study Plan Determination)

April 2012**Apr 09** - 1:00 pm - 5:00 pm

Don Pedro Project Relicensing - Hydrology Workshop (W&AR-2)

Apr 10* - 10:30 am - 5:00 pm Don Pedro Project Relicensing - Salmonid Population Information Workshop (W&AR-5)

Apr 11 - 9 am – 12:00 pm Don Pedro Project Relicensing – Temperature Criteria Workshop (W&AR-14)

June 2012

Jun 26 - 9:00 am - 4:00 pm Don Pedro Project Relicensing - Salmonid Population Information Workshop (W&AR-5)

November 2012

Nov 15 - 9:00 am - 4:00 pm Don Pedro Project Relicensing - Chinook Population (W&AR-6) and *O. mykiss* Population (W&AR-10) Modeling Workshop

2013 (Dates to be determined)

March 2013 (preliminary) - 9 am to 4 pm Don Pedro Project Relicensing - 2nd Workshop Chinook Population (W&AR-6) and *O. mykiss* Population (W&AR-10) Modeling

***NOTE:** From 8:30 am to 10:15 am, the Districts will conduct an introduction to the MIKE3 reservoir temperature model for use in W&AR-3. The goal is to introduce the model platform, computation methods, model development, and data sources. This is not considered a formal workshop. The Districts are also planning to conduct a discussion and presentation of the reservoir temperature model validation results at a Relicensing Participant Meeting on September 18, 2012 from 9 am to 4 pm at MID. Please add this meeting to your calendars.