

July 31, 2012  
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FERC Project No. 2299-075

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

Subject: Don Pedro Project Study Dispute, P-2299-075  
Request for Clarification of the Director's May 24, 2012  
Formal Study Dispute Resolution

Dear Secretary Bose,

On May 24, 2012, the Director of the Federal Energy Regulatory Commission ("FERC" or "Commission") issued his Formal Study Dispute Determination for the Don Pedro Project ("Project"). Upon careful review of the Dispute Determination and the transcript of the Technical Panel Meeting, the Turlock Irrigation District ("TID") and the Modesto Irrigation District ("MID"), co-licensees for the Project (collectively, the "Districts"), are requesting that certain elements of the Dispute Determination be clarified. These elements are discussed below.

A. Flow data for the five flow paths at the Districts' La Grange facility.

The Director's Dispute Determination states that the Districts shall provide to relicensing participants "discharge information for the five flow paths at the La Grange" facility. The Director's Determination also states (Appendix B; pg 12) that "the [Technical] Panel stated that the Districts agreed to provide the data in NMFS-4, Element 2 on the amount of water released through each of the four (clarified as five by the Districts during the technical meeting) different flow paths at the La Grange complex." Therefore, it appears that the Director's decision on this item relied upon the Technical Panel's Report.

The issue of historical releases at each of the La Grange Project's flow release points was originally raised by the National Marine Fisheries Service ("NMFS") in its study request labeled NMFS-4, Element 2 of June 10, 2011. In this request, NMFS recommended that the Districts be required to "partition the flow recorded at the Tuolumne River Below La Grange Dam Near Tuolumne CA gage into the four potential conduits for flow release." In its June 10 letter, NMFS identified these four flow release "conduits" as the Modesto Canal spillway, the Turlock Canal spillway, the powerhouse at the Turlock canal, and the La Grange spillway.

At the Technical Panel Conference held in Sacramento on April 17, 2012, the Districts clarified that there are actually five separate flow outlets to the Tuolumne River at the La Grange Project, not four as identified by NMFS. The Districts also reiterated at the Technical Conference that they could provide, and were willing to provide, approximate historical and future estimated flows to be derived from the Project Operations Model subdivided into two flow releases into the Tuolumne River – the TID powerhouse and the La Grange spillway. NMFS disputed the Districts’ proposed partitioning of flows into just two release points to the Tuolumne River.

As stated above, the Director’s Dispute Determination appears to require that the Districts provide the historical flow releases into the Tuolumne River from each of the five flow release conduits at La Grange Dam as requested by NMFS. Again, the Districts assume that this decision by the Director was based on the Technical Panel’s statement in its May 4, 2012 Panel Report that the Districts “agreed to provide the data in NMFS-4, Element 2.”

However, as the transcript of the Technical Conference makes clear, the Districts did not agree to provide these data for the simple reason that the Districts have no systematic record of flows from each of these five flow paths (see Panel Conference Transcript, pg 158, line 9/10 where Mr. Devine, the Districts’ consultant states that “the data does not exist for all four flow paths” [note: the data do exist for one of the five flow paths]; line 22/23 where Mr. Devine states “where these different gates [each La Grange outlet to the river] were and what positions they were at on a daily and hourly basis, the data doesn’t exist”; see other Transcript references at pg 161, line 11; pg 163, line 16 – 20).

Therefore, the Districts respectfully request that the directive to provide “discharge information for the five flow paths at the La Grange” facility be modified because these data do not exist in any systematic or continuous record.

**B. Providing Statistical Analyses of Flow Information**

NMFS has also requested a number of analyses of flows below the La Grange Project, including analyses of peak flows and of the rate of change of stage at the La Grange USGS gage. The Districts did agree to conduct these various analyses as requested by NMFS, but only to the extent that adequate data are available for the time periods sought for the analysis. As suggested by the Commission staff at the Technical Panel Conference, the Districts are moving forward with compiling a list of the available data, the time interval of the raw data, and the duration of the record. The Districts will share this information with FERC and the relicensing participants when it is completed.

C. Workshop Consultation Process

On March 5, 2012, the Districts, in accordance with the Commission's December 22, 2011 Study Plan Determination, forwarded to Relicensing Participants ("RPs") and FERC staff, a draft of the proposed Workshop Consultation Process for those study plans where the Districts and RPs had agreed to conduct formal Workshops as a means to continue discussions on certain Study Plans. The draft Workshop Consultation Process also provided a schedule for those studies where Workshop Consultation Meetings were proposed.

On March 20, 2012, the Districts and RPs held a meeting specifically dedicated to discussing the draft Workshop Consultation Process. The California Department of Fish and Game ("CDFG") provided two recommendations for improving the Workshop Consultation Process which the Districts incorporated into the subsequent Workshops. No additional comments from RPs or FERC staff were received on the draft Workshop Consultation Process. The Districts therefore filed the final Workshop Consultation Process with FERC on May 18, 2012, six days before the Director's Dispute Determination. Consistent with its Revised Study Plan, the Districts proposed to include formal Workshops for consultation purposes as part of four study plans -- W&AR-2,-5, -6, and -10.

The Director's May 24<sup>th</sup> decision, however, indicated that the formal Workshop Consultation Process should also be included as part of W&AR-3 and -16 as well. The Districts do not believe that a formal Workshop Consultation Process is necessary, nor of benefit, to those two studies. Study Plan W&AR-3 is the development of the reservoir temperature model for the Don Pedro Reservoir.

On April 10, 2012, the Districts conducted a technical information session as part of this study. At that meeting, the Districts also committed to present to RPs later this fall the critical calibration/verification results of the model and to conduct a training session for those participants who wish to run the model on their own. This obviates any need for a formal Workshop Consultation Process. The Districts also committed to do the same for Study Plan W&AR-16, the recalibration of the lower Tuolumne River stream temperature model. In fact, the original stream temperature model report recommending the model recalibration was filed with FERC in March 2011, after opportunity for review and comment. No comments were provided by any party. The next substantive milestone in W&AR-16 is to present the recalibration results to the RPs, which the Districts have already committed to do.

Therefore, the Districts respectfully request that the formal Workshop Consultation Process only apply to W&AR-2, 5, 6 and 10 as envisioned by the final Workshop Consultation Process filed with FERC on May 18, 2012.

Ms. Kimberly D Bose

July 31, 2012

Page 4

The Districts continue to appreciate the exceptional time and effort expended by the FERC staff on the Don Pedro project relicensing process. We look forward to your response to the clarifications identified by this letter.

Sincerely,

HDR Engineering, Inc.

A handwritten signature in black ink, reading "John Devine". The signature is written in a cursive, flowing style with a large initial "J" and a long, sweeping underline.

John Devine, P.E.  
Project Manager